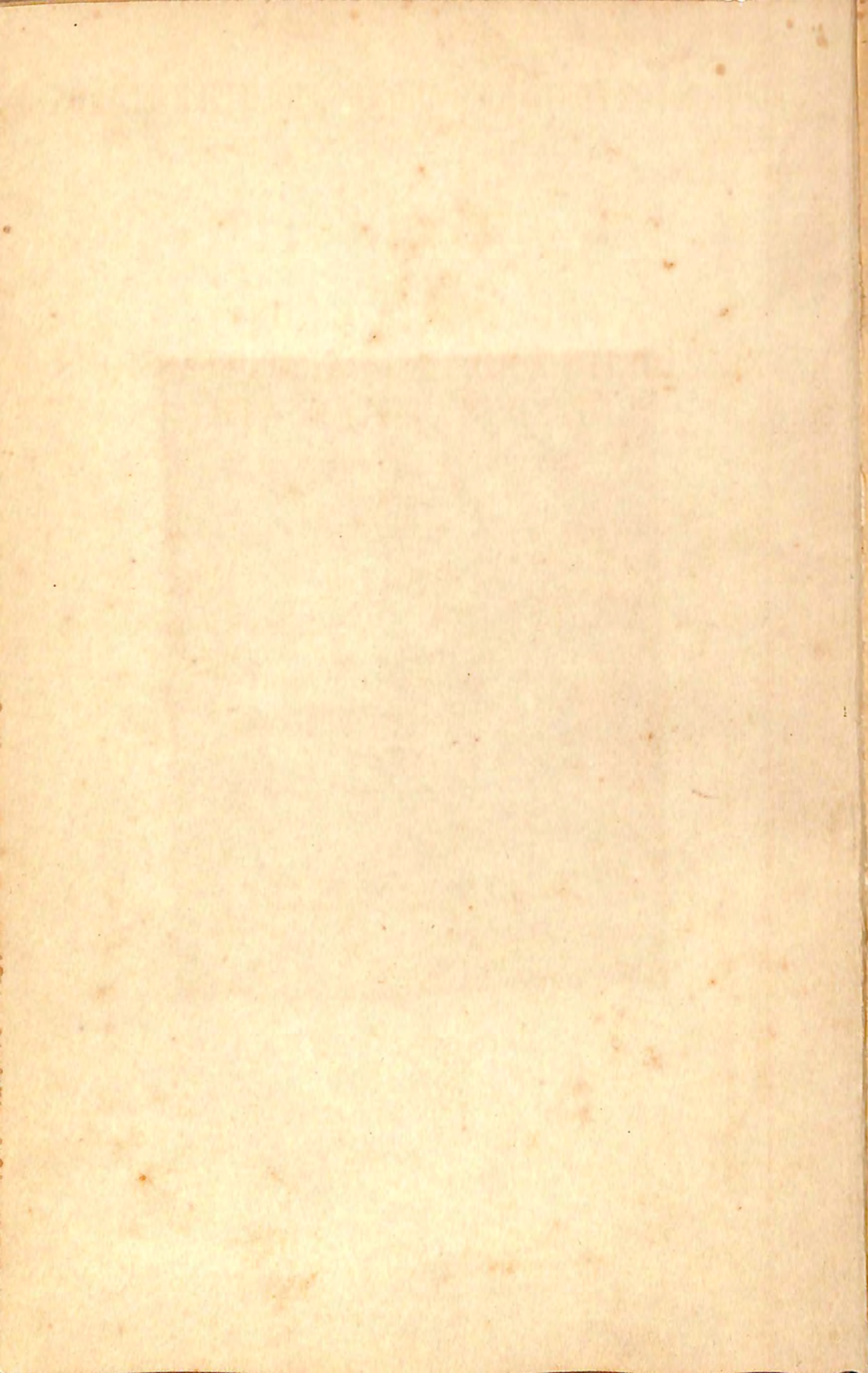


AUDITOR FOR PORTO RICO
AND THE PHILIPPINES



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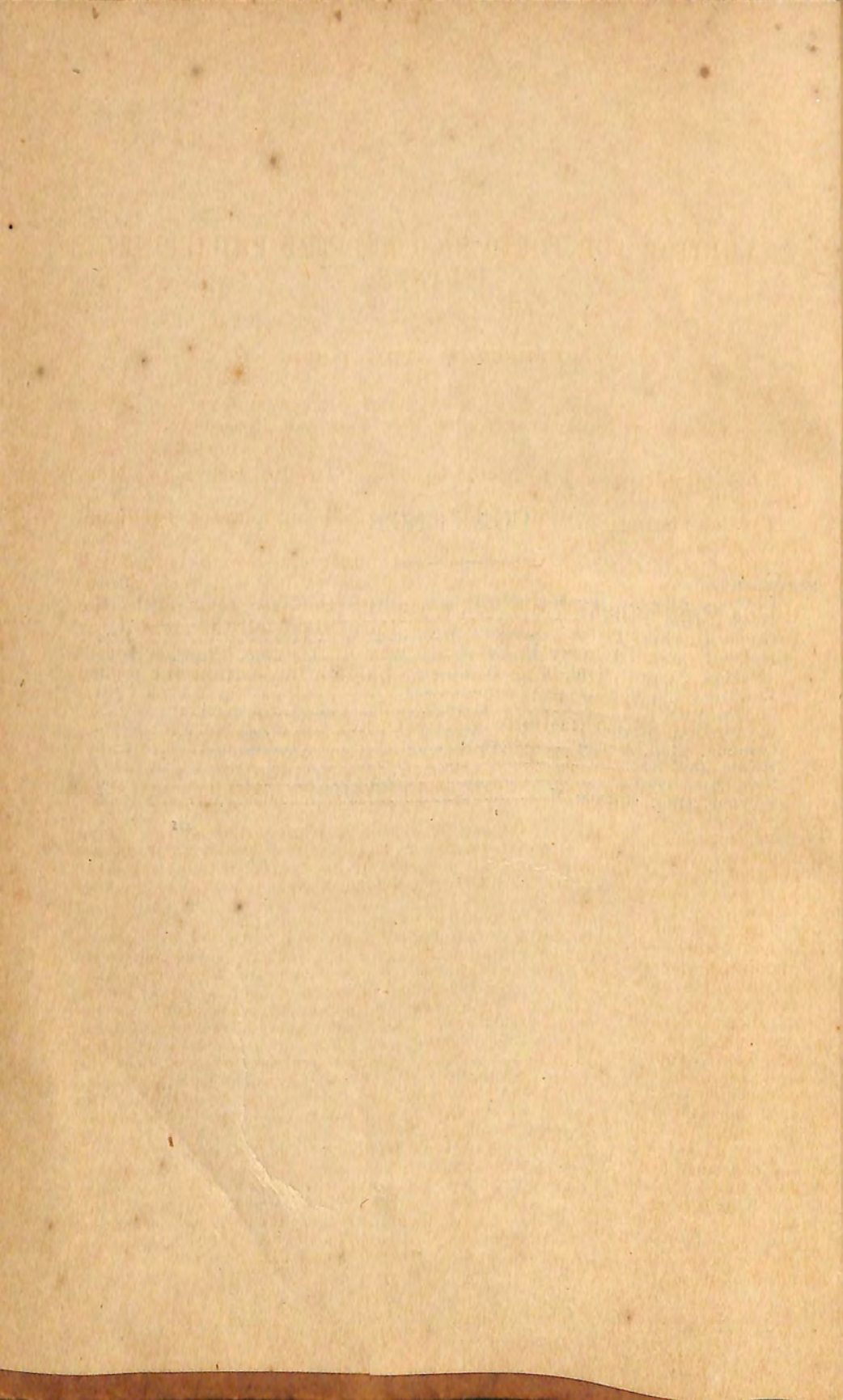
COMMITTEE ON TERRITORIES AND INSULAR POSSESSIONS

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AUDITOR FOR PORTO RICO AND THE PHILIPPINE ISLANDS

WEDNESDAY, APRIL 7, 1926

UNITED STATES SENATE,
COMMITTEE ON TERRITORIES AND INSULAR POSSESSIONS,
Washington, D. C.

The committee met, pursuant to call, at 10.30 o'clock a. m., Hon. Frank B. Willis presiding.

Present: Senators Willis (chairman), Johnson, Lenroot, Bingham, Bayard, and Bratton.

The CHAIRMAN. There are several matters to come before the committee this morning, and one of those which will receive preliminary attention is the bill amending the law relating to the powers and duties of the auditor for Porto Rico and the auditor for the Philippine Islands. This bill was introduced by myself and will be placed in the minutes at this point in order that the record may be complete.

(The bill (S. 3847) is as follows:)

[S. 3847, Sixty-ninth Congress, first session]

A BILL To amend and clarify existing laws relating to the powers and duties of the auditor for Porto Rico and the auditor for the Philippine Islands

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 20 and 21 of the act entitled "An act to provide a civil government for Porto Rico, and for other purposes," approved March 2, 1917, as amended, are amended to read as follows:

"Sec. 20. There shall be appointed by the President an auditor, at an annual salary of \$8,000 for a term of four years and until his successor is appointed and qualified, who shall examine, audit, adjust, decide, and settle all accounts and claims for or against the government of Porto Rico, pertaining to, or growing out of, the revenues and receipts from whatever source of such government and for or against its municipal governments or dependencies, including public trust funds and funds derived from bond issues; and shall examine, audit, adjust, decide, and settle, in accordance with law and administrative regulations, all accounts and claims for or against the government of Porto Rico growing out of the expenditure of funds or property pertaining to or held in trust by the government or municipalities thereof; and shall perform like duties in respect of all accounts and claims for or against all government branches.

"All such adjustments, decisions, and settlements of the auditor shall be final and conclusive, except as specifically provided in this act. The auditor shall, except as provided in this act, have like authority as is now or may hereafter be conferred by law upon the Comptroller General of the United States, and is authorized to communicate directly with any person having claims before him for settlement, or with any department, officer, or person having official relations with his office. He shall keep the general accounts of

the government and preserve the vouchers and other papers pertaining thereto.

"It shall be the duty of the auditor to bring to the attention of the proper administrative officers expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant.

"The administrative jurisdiction of the auditor over accounts, whether of funds or property, and over all vouchers and records pertaining thereto, shall be exclusive. With the approval of the governor he shall from time to time make and promulgate general or special rules and regulations not inconsistent with law prescribing the method of accounting for public funds and property, and funds and property held in trust by the government or any of its branches.

"Any officer accountable for public funds or property may require such reports or returns from his subordinates or others as he may deem necessary for his own information and protection.

"As soon after the close of each fiscal year as the accounts of said year may be examined and adjusted the auditor shall submit to the governor and the Secretary of War an annual report of the fiscal concerns of the government showing the receipts and disbursements of the various departments and bureaus of the government and of the various municipalities, and make such other reports as may be required of him by the governor or the Secretary of War.

"The office of the auditor shall be under the general supervision of the governor and shall consist of the auditor, and one assistant auditor at an annual salary of \$5,000, appointed in the same manner as the auditor, and such necessary employees as shall be prescribed by law. The assistant auditor shall sign such official papers and perform such other duties as the auditor may prescribe, and in event of the death, resignation, disability from whatever cause, or absence of the auditor from the jurisdiction, the assistant auditor shall act as auditor, and shall have charge of such office.

"In the execution of their duties the auditor and the assistant auditor are authorized to summon witnesses, administer oaths, and to take evidence, and, in pursuance of these provisions, may issue subpoenas and enforce the attendance of witnesses, as now provided by law.

"SEC. 21. That any person aggrieved in respect of his account or claim by any action or decision of the auditor may, within ninety days, take an appeal in writing to the governor, which appeal shall specifically set forth the particular action or decision of the auditor to which exception is taken, with the reasons and authorities relied upon for reversing such action or decision.

"If the governor shall confirm the action or decision of the auditor, he shall so indorse the appeal and transmit it to the auditor, and such action or decision shall thereupon be final and conclusive. Should the governor fail to sustain the action or decision of the auditor, he shall forthwith transmit the appeal to the Comptroller General of the United States, together with his grounds of disapproval and the papers necessary to a proper understanding of the matter. The decision of the Comptroller General of the United States in such case shall be final and conclusive."

SEC. 2. Sections 24 and 25 of the act entitled "An act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands, approved August 29, 1916, as amended, are amended to read as follows:

"SEC. 24. There shall be appointed by the President an auditor, who shall examine, audit, adjust, decide, and settle all accounts and claims for or against the Philippine Government pertaining to or growing out of the revenues and receipts, from whatever source, of the Philippine Government and for or against the provincial and municipal governments of the Philippines, including public trust funds and funds derived from bond issues; and shall examine, audit, adjust, decide, and settle, in accordance with law and shall examine, regulations, all accounts and claims for or against the Philippine Government growing out of the expenditure of funds or property pertaining to or held in trust by the government or the Provinces or municipalities thereof; and shall perform like duties to those hereinabove described in respect of all accounts and claims for or against all government branches, and shall examine and audit the accounts of all corporations in which said government shall own a controlling interest.

"All such adjustments, decisions, and settlements of the auditor shall be final and conclusive except as specifically provided in this act. The auditor

shall, except as provided in this act, have like authority as is now or may hereafter be conferred by law upon the Comptroller General of the United States, and he is authorized to communicate directly with any person having claims before him for settlement, or with any department, officer, or person having official relations with his office. He shall keep the general accounts of the government and preserve the vouchers and other papers pertaining thereto.

"It shall be the duty of the auditor to bring to the attention of the proper administrative officers expenditures of funds or property which in his opinion are irregular, unnecessary, excessive, or extravagant.

"The administrative jurisdiction of the auditor over accounts, whether of funds or property, and over all vouchers and records pertaining thereto, shall be exclusive. With the approval of the Governor General, he shall from time to time make and promulgate general or special rules and regulations not inconsistent with law prescribing the method of accounting for public funds and property and funds and property held in trust by the government or any of its branches, and he shall have like jurisdiction and authority in respect of the method of accounting of all corporations in which the government owns a controlling interest.

"Any officer accountable for public funds or property may require such reports or returns from his subordinates or others as he may deem necessary for his own information and protection.

"As soon after the close of each fiscal year as the accounts of said year may be examined and adjusted the auditor shall submit to the Governor General and the Secretary of War an annual report of the fiscal concerns of the government, showing the receipts and disbursements of the various departments and bureaus of the government and of the various Provinces and municipalities, and shall also make a similar report of his examination and audit of the fiscal concerns of all corporations in which the government owns a controlling interest; and shall make such other reports as may be required of him by the Governor General or the Secretary of War.

"The office of the auditor shall be under the general supervision of the Governor General and shall consist of the auditor, three assistant auditors appointed in the same manner as the auditor, and such necessary employees as shall be prescribed by law. One of the three assistant auditors shall be an experienced attorney at law, and one shall be experienced in the supervision, examination, and liquidation of banking institutions. The assistant auditors shall sign such official papers and perform such other duties as the auditor may prescribe, and in event of the death, resignation, disability from whatever cause, or absence of the auditor from the jurisdiction, the Governor General shall designate one of the assistant auditors to act as auditor and to have charge of such office.

"In the execution of their duties the auditor and the assistant auditors are authorized to summon witnesses, administer oaths, and take evidence, and, in pursuance of these provisions, may issue subpoenas and enforce the attendance of witnesses, as now provided by law.

"SEC. 25. That any person aggrieved in respect of his account or claim by any action or decision of the auditor may, within 90 days, take an appeal in writing to the Governor General, which appeal shall specifically set forth the particular action or decision of the auditor to which exception is taken, with the reasons and authorities relied upon for the reversing such action or decision.

"If the Governor General shall confirm the action or decision of the auditor, he shall so indorse the appeal and transmit it to the auditor; and such action or decision shall thereupon be final and conclusive. Should the Governor General fail to sustain the action or decision of the auditor, he shall forthwith transmit the appeal to the Comptroller General of the United States, together with his grounds of disapproval and the papers necessary to a proper understanding of the matter. The decision of the Comptroller General of the United States in such case shall be final and conclusive."

SEC. 3. Section 29 of such act, approved August 29, 1916, as amended, is amended by striking out "auditor, \$6,000; deputy auditor, \$3,000," and inserting in lieu thereof "auditor, \$10,000; assistant auditors, \$6,000 each."

It is not proposed to take final action on the bill this morning, as Senator King has advised me he desires to be heard and can

not now be present, but Commissioner Guevara and Senator Sergio Osmena, of the Philippine Islands, are here and we shall be glad to hear either one or both of those gentlemen at this time.

STATEMENT OF HON. PEDRO GUEVARA, RESIDENT COMMISSIONER OF THE PHILIPPINE ISLANDS

Commissioner GUEVARA. Mr. Chairman and gentlemen of the committee, Senator Osmena, who is the head of a delegation from the Philippine Islands, is now present in Washington and he happened to learn only this morning that a bill has been introduced in the Senate purporting to amend the organic law of the Philippine Islands regarding the powers of the auditor of that country. In case this bill is to be acted upon by the committee, we request that we be granted an opportunity to express our views. For the present I will confine myself to presenting Senator Osmena to the committee who is here present.

The CHAIRMAN. Before you leave the stand Mr. Commissioner, are we correct in understanding that you desire the latter hearing upon this bill.

Commissioner GUEVARA. Yes, sir.

The CHAIRMAN. You desire a hearing as well as to file a brief?

Commissioner GUEVARA. Yes, sir.

The CHAIRMAN. Very well.

STATEMENT OF HON. SERGIO OSMENA, MEMBER OF THE SENATE OF THE PHILIPPINE ISLANDS

Mr. OSMENA. Since the committee has kindly consented to our request for a hearing, I will await when that time comes to express our views on this bill. Nothing definite can be said this morning because we have had no chance to make a full study of the bill, which is very important, in as much as it seeks to enlarge the powers and duties of the auditor for the Philippine Islands and provide for increase in salary and additional positions. I should like to have a full knowledge of the scope and extent of this proposed legislation before discussing it.

Senator JOHNSON. Do you favor or oppose the bill?

Mr. OSMENA. I am not yet in a position to state my stand. I should like to know exactly the scope of this bill first. Then I can submit my views to the committee.

The CHAIRMAN. Would you and Commissioner Guevara be ready in a week from to-day? I might say that it is the purpose of the committee to hold weekly meetings until we get the matters that are before us disposed of.

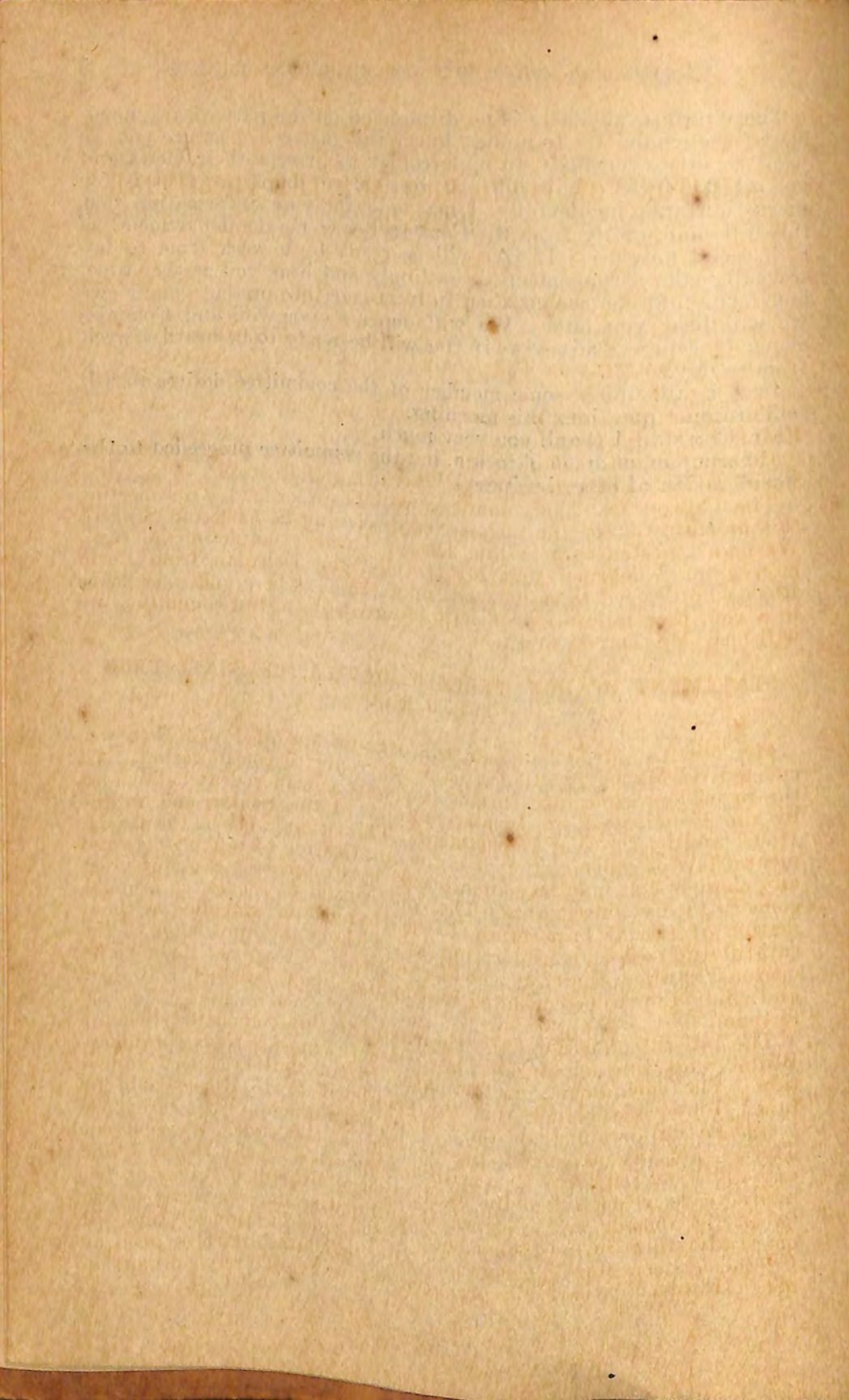
Mr. OSMENA. We will try to accommodate ourselves to the pleasure of the committee, although if I may be permitted to say, this administration and additional expenditure of public funds in the Philippines, in salaries and otherwise, I think it highly advisable that the Philippine Legislature be given an opportunity to express its own views before the committee takes action.

The CHAIRMAN. There is no disposition on the part of any member of the committee to unduly hurry this matter. I assure you we want to give everybody an opportunity to present their views and get all the facts. This bill was introduced simply as a basis for discussion and, incidentally, I may add for your information that this bill came really from the Comptroller General's department, as a financial measure. If you will be ready by a week from to-day we will make arrangements accordingly and hear you at that time, but if you find you are not then fully prepared to present your views we will hear you later. We will depend upon you and Commissioner Guevara to advise us if you will be ready to be heard a week from to-day.

That is all, unless some member of the committee desires to ask some further questions this morning.

Mr. OSMENA. I thank you very much.

(Thereupon, at 10.55 o'clock a. m., the committee proceeded to the consideration of other business.)



AUDITOR FOR PORTO RICO AND THE PHILIPPINE ISLANDS

SATURDAY, APRIL 17, 1926

UNITED STATES SENATE,
COMMITTEE ON TERRITORIES AND INSULAR POSSESSIONS,
Washington, D. C.

The committee met, pursuant to call, at 10.30 o'clock a. m., Hon. Frank B. Willis presiding.

Present: Senators Willis (chairman), Lenroot, Bingham, Robinson of Indiana, Pittman, Harris, Bayard, and Bratton.

The CHAIRMAN. The committee will be in order. This meeting this morning is for the purpose of discussing S. 3228 and S. 3847. We had expected to hear first Doctor Tucker, completing his testimony, but I learned that Mr. Davila, the Delegate from Porto Rico, who desired to say a word on S. 3847, is here and must leave in a very few minutes. So, if it is agreeable to the committee, we will hear Mr. Davila first.

STATEMENT OF HON. FELIX C. DAVILA, DELEGATE FROM PORTO RICO

Mr. DAVILA. Mr. Chairman, the organic law of Porto Rico was enacted on March 2, 1917, after a very careful consideration. All the provisions contained in this law were considered and discussed by the Committees on Insular Affairs in the Senate and in the House and by the War Department. This organic law is the fundamental law of our country; it is the constitution of our people; and any change that may be contemplated by Congress is cause of great concern to my constituents. The constitution of a country is not a matter of trivial importance, to be changed or amended without careful and serious consideration and without the knowledge of the citizens affected thereby, who are entitled to express their views and who ought to be consulted in a matter like this which is so dear to them.

The bill introduced by the chairman of this committee, Senator Willis, amending our organic law, deserves most serious consideration. The amendments contemplated in this bill are most important. I honestly believe that the people of Porto Rico should be given an opportunity to study these amendments very carefully. There is not any necessity to pass this bill at this time. We have not any difficulty in Porto Rico with the Auditor of the Island. For many years we have had the existent law without any friction between the insular and continental authorities and it seems to me most advisable the postponement of the consideration of this bill for the next session of Congress. This legislation may be good or not. However, we are not prepared yet to render any opinion on

the matter. We are only asking for time to study the proposed amendments. It is only fair to grant our request. To change the Constitution of a country in 24 hours is, in my opinion, a very poor policy. Congress is nearing adjournment. Probably at the end of May this session will end and I can not understand the reasons which may justify any hurry to press this legislation at this time. I am sure that it is your purpose to give us a square deal. I ask for the postponement of the consideration of this bill until the next session of Congress.

I know that you are not going to legislate for Porto Rico without giving full consideration to the legislation contemplated. By ordinary procedure, Mr. Chairman, are we not entitled to consider very carefully any legislation which will change the organic law of our country? Our Constitution is as dear to us as the Constitution of the United States is dear to all American citizens, including the people of Porto Rico, as the constitution of any State is dear to the people of that State. That is the reason I am asking for a postponement.

For you this is another bill introduced in Congress, but for Porto Rico it is not an additional bill introduced in this country—it is a change contemplated in the fundamental law of our country; and I believe that at this time when Congress is about to adjourn it is not fair, Mr. Chairman, to contemplate a change of this importance in the constitution of **Porto Rico**.

Therefore, I hope you will postpone the consideration of this bill for the next session of Congress. We are only asking for time. We are not prepared to have to render any opinion. Maybe this legislation is good; maybe it will be advisable for our people to accept it. Who knows at this time?

The finances of a country are something very important, and you have to study this power of raising revenue for many years and still there are some doubts about this legislation in the United States; and do you intend that we Porto Ricans when we study this legislation shall only have a terribly short time, when you have taken such a long time to study that legislation?

On this matter, Mr. Chairman and gentlemen of the committee, I ask that you give us reasonable time to study this legislation and that you postpone the same till the next session of Congress. (The committee thereupon proceeded to the consideration of other business.)

AUDITORS FOR PORTO RICO AND THE PHILIPPINE ISLANDS

TUESDAY, APRIL 20, 1926

UNITED STATES SENATE,
COMMITTEE ON TERRITORIES AND INSULAR POSSESSIONS,
Washington, D. C.

The committee met, pursuant to adjournment, at 10.30 o'clock a. m., Hon. Frank B. Willis presiding.

Present: Senators Willis (chairman), Lenroot, Bingham, Bayard, Bratton, and Nye.

The CHAIRMAN. The committee will be in order. The hearing this morning is for the purpose of considering Senate bill 3847.

I wish at this point to insert a letter which has come to me from the Secretary of War, setting forth the purposes of this bill.

(The letter referred to is as follow:)

Hon. FRANK B. WILLIS,

Chairman Committee on Insular Affairs, United States Senate.

DEAR SENATOR WILLIS: I have your letter of April 10 inclosing a copy of S. 3847, a bill to amend and clarify existing laws relating to the powers and duties of the auditor for Porto Rico and the auditor for the Philippine Islands.

I have caused a careful study to be made of this bill and I have personally given it careful consideration.

The provisions of this bill strengthening the personnel of the auditor's office in Porto Rico and the Philippine Islands by increasing the number of persons therein to be appointed by the President and the salaries of these positions have my unqualified approval.

In view of the great responsibilities of these officers and the great losses to the governments concerned that arise when they are not competently filled, together with the fact that the present salaries provided are inadequate and make it difficult and at times impossible to secure proper personnel, I think that the action proposed in this respect is most urgent. This has likewise been the view of my immediate predecessor in the War Department. It has also been urged by the Governor General of the Philippine Islands, and you will recall that the Legislature of Porto Rico went so far as to fix an increased salary for the auditor in the appropriations act approved July 14, 1923, subject to the approval of Congress, which had fixed the salary at \$5,000 per annum. Congress increased the salary not to the \$7,000 provided by the legislature, but to \$6,000 per annum.

The object of the remaining amendments is to make clear that the accounting systems provided for Porto Rico and the Philippine Islands are substantially identical to the accounting system of the United States, which has been in successful operation in this country since the ordinance of September 26, 1778, of the Continental Congress.

Until 1855 when the Court of Claims came into existence claims against the Government were under the exclusive jurisdiction of the accounting officers and the Congress. Such was thought to be the situation in Porto Rico and the Philippine Islands, and it seems clearer that the Congress so intended to provide in the organic acts of these two Governments. However, recent decisions of the Supreme Court of the Philippine Islands have cast doubt upon such a construction of the organic acts, hence it appears advisable that the

situation be clarified, for unless and until the Congress sees fit to consent to these governments being sued in their courts, it is believed to be desirable to retain the exclusive jurisdiction of the accounting officers and legislatures over claims against such governments.

Such a plan will be in keeping with the procedure followed by the Congress in dealing with such matters in this country with a degree of success which speaks for itself.

There may be some question as to whether the bill as now drawn gives the auditor jurisdiction over claims for refund of custom duties and taxes in the Philippine Islands. If it is the desire of the Congress that the jurisdiction of the auditor should include this class of claims, that intent would be made clearer by inserting after the word "hereof" in line 3, page 6, the words, "including claims for refund of customs duties and taxes." This does not apply to Porto Rico, for at least in so far as custom duties are concerned the collection and refund are under the control of the custom authorities of the United States.

With regard to the reduction of the time in which an appeal can be taken to the Governor General from 1 year to 90 days, I think this is undesirable and that the time should be left at 1 year or certainly not reduced below 6 months.

Sincerely yours,

DWIGHT F. DAVIS,
Secretary of War.

The CHAIRMAN. It will be noted that this bill relates to the duties of the auditor for Porto Rico and for the Philippines.

I wish to say in explanation that Governor Towner, of Porto Rico, came here yesterday in company with the Secretary of War, and advised me that their delegation would be here, I think, to-day, and that they wanted an opportunity to confer before they discussed this matter as it relates to Porto Rico. I told them that that would be entirely agreeable and that the meeting this morning would be confined to a discussion of this bill, S. 3847, as it relates especially upon that theory. We will therefore proceed with the hearing.

Senator Osmena has been here at two or three meetings and has been very patient, so we would be very glad to hear Senator Osmena first in any statement that he cares to make.

STATEMENT OF HON. SERGIO OSMENA, PRESIDENT PRO TEMPORE OF THE SENATE, PHILIPPINE ISLANDS, AND SPECIAL REPRESENTATIVE OF THE PHILIPPINE LEGISLATURE TO THE UNITED STATES (resumed)

The CHAIRMAN. What is your official situation?

Senator OSMENA. I am president pro tempore of the Philippine Senate and special representative of the legislature to the United States.

The CHAIRMAN. All right, Senator. Proceed in your own way with any statement that you desire to make.

Senator OSMENA. Mr. Chairman and members of the committee, we are grateful to the committee for the assurance given by the chairman that no hasty steps would be taken in connection with the pending bill. This measure is of very great importance to the Filipino people. It amends the fundamental law of the land. It may also affect the fundamental rights of its citizens.

In appearing before you to-day we are submitting only a preliminary statement. Should it be necessary we shall submit later a more comprehensive statement of our attitude toward this measure.

A brief examination of the bill convinces us that it contains provisions of highly controversial nature. Those provisions raise such important questions of policy that it seems the part of wisdom not to have them finally decided upon during the short time that remains before the adjournment of Congress.

There are no urgent reasons that call for enactment at this time. On the other hand, the existing laws governing the auditor's office in the Philippines have been on the whole in successful operation for over 20 years.

The bill affects the duties of various administrative officers of the Philippine government and would involve additional appropriation for greatly increased salaries. If it be passed during this session of Congress, there would be no opportunity for full consultation with the Philippine Legislature and the Philippine administrative officials whose duties would be affected by the law or for a thorough examination of the issues raised by the provisions of this bill.

In giving the auditor of the Philippines a salary equal to that of the Comptroller General of the United States and in creating the position of three assistant auditors at \$6,000 each per annum, it would conflict with the principle of economy followed not only by the Philippine government, but also by the American Government as well. The auditor of a government which spends not more than \$35,000,000 a year for the central administration would receive a salary as large as that of the Comptroller General of the United States Government, the appropriations for which total over \$3,000,000,000 annually. Such disproportionate salary would be paid with Philippine public funds, but without the indorsement of the Filipino people or their representatives.

There is in this bill no limitation on the authority of the auditor for the Philippines which would make his power less than that of the Comptroller General of the United States, but on the contrary, the bill proposes to confer upon him very important additional powers. The law, as it stands at present, already gives the auditor of the Philippines greater powers than the Comptroller General of the United States. To increase those power still, in view of the present political situation in the Philippines, would seem to be unwise and would be a step not calculated to produce greater harmony in the administration.

Under the proposed bill the auditor of the Philippine Islands would occupy a place in the Philippine government entirely unlike that of the Comptroller General of the United States. The latter official is responsible to the Congress of the United States. The auditor of the Philippines, with much greater powers, would exercise those powers without the slightest intervention of the representatives of the Filipino people. This is certainly a step not in harmony with the policy enunciated by McKinley and followed by his successors of granting ever increasing self-government to the Philippines.

The Jones law makes the auditor's decisions binding upon the executive departments only. It leaves the door open to judicial determination. Under the proposed law the "adjustments, decisions, and settlements" made by the auditor will be final and conclusive subject only to appeal to other executive officials. The law would give the auditor besides the powers usually pertaining to

a comptroller, those which properly belong to a trial court. This, we venture to say, is something entirely out of the harmony with American political principles and practices.

In removing the right to make final decisions on appealed cases from the Secretary of War and placing it in the hands of the Comptroller General, a very important departure in the policy governing the administrative system, which has been in operation for almost 30 years, is made. It may be the entering wedge for placing the contacts between the Philippine government and the American Government through many departments or bureaus instead of concentrating them in one department.

Because of these considerations, involving as they do, very important questions and upon which legitimate differences of opinion are certain to arise and in view of the lack of time to consider fully these very important points of policy, we request the committee to postpone consideration of the bill until the next session of Congress. The President of the United States has just announced the appointment of a commissioner to investigate Philippine affairs and to report not later than November. What harm can there be in withholding action on legislation affecting the Philippines until the report of this special envoy and the views of the Philippine Legislature are made available?

The CHAIRMAN. Does any member of the committee desire to ask questions of Senator Osmena?

Senator BAYARD. May I ask a question?

The CHAIRMAN. Yes.

Senator BAYARD. Your present auditor works on an annual basis and makes a report at the end of every year?

Senator OSMENA. Yes, sir.

Senator BAYARD. To whom does he make this report?

Senator OSMENA. To the legislature, to the Governor General, and to the Secretary of War.

Senator BAYARD. Does an appeal lie from decisions of the auditor to the Governor General?

Senator OSMENA. We have that appeal.

Senator BAYARD. You have it?

Senator OSMENA. Yes.

Senator BAYARD. Does that appeal to the Governor General apply to individuals?

Senator OSMENA. Occasionally they appeal to the Governor General; but this does not preclude recourse to the courts under certain circumstances.

Senator BAYARD. What is the amount set up in the budget for your present auditor?

Senator OSMENA. I don't know exactly.

Senator BAYARD. Tell us about.

Senator OSMENA. About \$200,000. I don't mean exactly.

Senator BAYARD. You suggest in your statement that the cost of present cost of operation.

Senator OSMENA. Yes; for these reasons: According to this bill his salary is increased and in addition two new assistants are created. His functions being increased, his administrative machinery will necessarily be expanded.

Senator BAYARD. I just want to get your idea of what in dollars and cents would be the excess cost under the proposed law as compared to the present law.

Senator OSMENA. It would be difficult to make a definite statement now. Under the new law his salary and the expenditures of his office would be increased. If you allow an increase of his salary which is now equal to that of the President of the Senate and the Speaker of the House and the members of the Cabinet, you open the door for a general increase in salaries.

The CHAIRMAN. What salary does the present auditor receive?

Senator OSMENA. \$6,000.

The CHAIRMAN. What is his proposed salary?

Senator OSMENA. \$10,000. That is a salary equal to that of the Comptroller General here. We think that his is a much less important office.

The CHAIRMAN. Has any other member any question to ask?

Senator LENROOT. What powers does the auditor now have? Has he any discretionary powers or power to determine matters not ministerial?

Senator OSMENA. Generally speaking, he has, I think, more powers than the Comptroller General.

Senator LENROOT. Haven't there been some decisions of your courts recently denying him that power?

Senator OSMENA. No, sir; I think there was one case where he was trying to interfere with the action of other administrative officials.

Senator LENROOT. That is what I say. He has no right to review the action of any other department in allowing claims or accounts.

Senator OSMENA. He has that right except in special cases where the law provides otherwise.

Senator LENROOT. He hasn't any power to review the action of other departments of the Government respecting the legality of allowances?

Senator OSMENA. Yes; except in those special cases referred to.

Senator LENROOT. He isn't given any power under the law to review the action of any department with reference to the legality of a claim after it has been passed upon by another department, is he?

Senator OSMENA. No, sir; in cases where the law expressly grants discretionary authority to another administrative official.

Senator BINGHAM. That is a very much less power than the Comptroller of the United States has.

Senator BAYARD. Have there been any controversies between the present auditor and the President of the Philippine Islands with reference to these accounts?

Senator OSMENA. No.

Senator BINGHAM. I notice that you say that under the present system the door is left open for a judicial review for those aggrieved by such decisions. Is it not true that the Comptroller General of the United States is not subject to judicial review?

Senator OSMENA. The decisions of the comptroller are not reviewable by the courts. In the Philippines the courts do not interfere with the discretionary power of the auditor.

Senator LENROOT. His refusal to perform would be a ministerial action?

Senator BINGHAM. Yes; but our Supreme Court has no power to set aside his decision, whereas in the Philippines the court exercised the right of setting aside the decision of the auditor.

Senator OSMENA. You have your Court of Claims. I think that your Court of Claims has jurisdiction over certain cases which have already been passed upon by the Comptroller General.

The CHAIRMAN. Have you a Philippine court of claims?

Senator OSMENA. No, sir.

The CHAIRMAN. That raises another question. It makes a different situation. Where you have a court of claims it is quite different from the situation that exists when you don't have one.

Senator OSMENA. They don't have any.

Senator LENROOT. Under your government over there can an attorney sue the government?

Senator OSMENA. With the permission of the government.

Senator LENROOT. If he has a claim against the Philippine Government he can only bring a suit with the consent of the government?

Senator OSMENA. Yes; with the consent of the government.

The CHAIRMAN. Has any other member of the committee a question?

Senator BINGHAM. You state that the auditor of the Philippines has much greater powers than the Comptroller General of the United States. Will you explain that and specify wherein he has greater powers than the Comptroller General?

Senator OSMENA. I can show you the law right now, if you will excuse me a minute. Of course, the powers of the auditor of the Philippines and the Comptroller General of the United States are not expressed in parallel terms. Our auditor may be said to have greater powers than your Comptroller here, in that besides the auditing of claims and accounts he may, or must, according to the present law, bring to the attention of the government officers expenditures of funds or property which in his opinion are irregular, unnecessary, excessive, or extravagant.

Senator LENROOT. Is that from the bill?

Senator OSMENA. No; that is in the present law.

The CHAIRMAN. That is exactly what is provided in this bill. It says here at the bottom of page 2: "It shall be the duty of the auditor to bring to the attention of the proper administrative officers expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant." That is in the present law and also in this bill.

Senator OSMENA. It is continued in the bill that the auditor can do that, and in that sense he has more power than the Comptroller General.

Senator LENROOT. That is not a matter of power; that is a matter of action. It is a matter of bringing to the attention of the department these things. He doesn't exercise any jurisdiction over it other than that, does he?

Senator OSMENA. No, sir; but he has other powers in other matters not possessed by the Comptroller General.

Senator BINGHAM. I don't see that this gives him any more power; it gives him additional duties.

Senator LENROOT. Under your existing law each department is passing upon claims; its determination in favor of a plaintiff is final?

Senator OSMENA. In certain cases only, such as in the case of customs, for example, and also internal revenue.

Senator LENROOT. Those two classifications?

Senator OSMENA. Yes.

Senator LENROOT. Refunds of taxes or refunds of duties?

Senator OSMENA. Yes.

Senator LENROOT. Other than that the action of the collector or head of a department is final?

Senator OSMENA. No.

Senator LENROOT. If against the Government?

Senator OSMENA. It would not be final.

Senator BINGHAM. Will you point out in the proposed law the particular paragraphs or sentences that you object to?

Senator OSMENA. Of course, Senator. I do not desire to make a detailed examination of the bill without consulting first my own people. That is why I am asking the committee to postpone consideration of this bill until next session. But if you would like me to submit a statement on that, I will do so.

The CHAIRMAN. I think the committee would be glad if you would do that, if you will submit your objection to this bill, particularly to the part that relates to the Philippines, that being section 2 and what follows. We would be very glad to have your written analysis of your objections, if any. We would like to have it as soon as you can get it to us.

Are there any questions?

Senator LENROOT. I would like to have the Senator express his view, not as to any particular provision of the bill, but whether there should not be lodged some power over the action of the administrative officials for allowing claims against the Government.

The CHAIRMAN. All right.

We will now hear Mr. O. R. McGuire, a representative of the Comptroller General.

STATEMENT OF O. R. MCGUIRE, ATTORNEY IN THE OFFICE OF THE COMPTROLLER GENERAL

The CHAIRMAN. What is your official situation?

Mr. MCGUIRE. Attorney in the office of the Comptroller General.

The CHAIRMAN. Where is the address?

Mr. MCGUIRE. The Treasury building.

The CHAIRMAN. You may proceed with such statement as you care to make.

Mr. MCGUIRE. I should like to say at the outset that I do not appear in an official capacity for the Comptroller General, because he is neither an opponent nor a proponent of this bill. He has sent me here to give the committee such information as may be requested and as will be of assistance to it in consideration of its bill.

The CHAIRMAN. I might say, in order to relieve any embarrassment in that respect, that I requested Mr. McGuire to come here, knowing that he has information on this subject.

Mr. McGUIRE. This present bill before the committee does not confer on the Auditor for the Philippine Islands or the Auditor for Porto Rico any greater powers than are possessed by the Comptroller General of the United States or than have been possessed by the former accounting officer of the Treasury since the beginning of our Government. Our accounting system began with the Continental Congress, with the ordinance of September 26, 1778. The Comptroller and the Auditor for the Continental Congress were given more power than they possessed under the act of September 2, 1789 (1 Stat. 65), organizing the Treasury Department.

This comptroller—now the Comptroller General—had the sole power of settling and paying claims from appropriated moneys and his decision was final and conclusive upon the executive department and all other departments of the Government. This was construed as final and conclusive on the courts, because under our Constitution—and there is the same provision in the Jones law, the organic law of the Philippine Islands—no money can be taken from the Treasury without the consent of Congress; and Congress has never seen fit, except in a very limited number of cases, to permit the judgments of courts to be paid from the appropriations made of September 30, 1890 (26 Stat. 537). In other words, the judgments to be reported to them for a special appropriation before they may be paid. The present statute on the subject is the act of September 30, 1890 (26 Stat. 537). In other words, the jurisdiction of the Comptroller General and the jurisdiction of the courts do not conflict or cross each other. This matter is correctly stated by the Court of Claims in *Geddes v. United States* (38 Court of Claims, 428, p. 444), as follows:

“The accounting officers are the guardians of the appropriations. It is their business to see that no money is paid out of the Treasury unless the payment is authorized by an appropriation act. It is not their business to adjudicate abstract questions of legal right beyond the legal right of a person to be paid out of a specific appropriation. An appropriation constitutes the means for discharging the legal debts of the Government.

The judgment of a court has nothing to do with the means—with the remedy for satisfying a judgment. It is the business of courts to render judgments, leaving to Congress and the executive officers the duty of satisfying them. * * *

The Supreme Court of the United States—prior to 1855 we had no Court of Claims—held that no suit could be brought against the United States, except in a few instances where Congress gave special permission to bring suit. There were several attempts during that time to get money out of the United States Treasury by mandamus against some officer of the Government; and the Supreme Court, in the case of the United States against Guthrie—I might give the citation; it is seventeenth Howard, 284—the court used this language where the mandamus was sought against the Secretary of the Treasury to require him to pay the disputed salary of a judge:

The only legitimate inquiry for our determination upon the case before us is this: Whether under the organization of the Federal Government or by any known principle of law there can be asserted a power in the Circuit Court of the United States for the District of Columbia or in this court to command the withdrawal of a sum or sums of money from the Treasury of the United States, to be applied in satisfaction of disputed or controverted claims against

the United States? This is the question, the very question presented for our determination; and its simple statement would seem to carry with it the most startling considerations—nay, its unavoidable negation—unless this should be prevented by some positive and controlling command; for it would occur a priori to every mind that a treasury not fenced round or shielded by fixed and established modes and rules of administration but which would be subjected to any number or description of demands, asserted and sustained through the undefined and undefinable discretion of the courts, would constitute a feeble and inadequate provision for the great and inevitable necessities of the Nation.

The Government under such a régime, or, rather, under such an absence of all rule, would, if practicable at all, be administered not by the great departments ordained by the Constitution and laws and guided by the modes therein prescribed but by the uncertain and perhaps contradictory action of the courts in the enforcement of their views of private interests.

In the case of *Brashear v. Mason* (6 How. 92), which occurred prior to 1855 also—a case against the Secretary of the Navy to require him to pay money out of the Treasury—the Supreme Court said:

We are also of opinion that if the plaintiff had made out a title to his pay as an officer of the United States Navy a mandamus would not lie in the court below to enforce the payment.

The Constitution provides that no money shall be drawn from the Treasury but in consequence of appropriations made by law. (Art. I, sec. 9.) And it is declared by act of Congress (3 Stat. L., p. 689, sec. 3) that all moneys appropriated for the use of the War and Navy Departments shall be drawn from the Treasury by warrants of the Secretary of the Treasury upon the requisitions of the Secretaries of these departments, countersigned by the second comptroller.

And, by the act of 1817—

Which is continued in existing law—

It is made the duty of the comptrollers to countersign the warrants only in cases when they shall be warranted by law. And all warrants drawn by the Secretary of the Treasury upon the Treasurer shall specify the particular appropriations to which the same shall be charged; and the moneys paid by virtue of such warrants shall, in conformity therewith, be charged to such appropriations in the books kept by the comptrollers; and the sums appropriated for each branch of expenditure in the several departments shall be solely applied to the object for which they are respectively appropriated, and no others.

The court further said in that case that if a writ of mandamus should lie against the official of the Government, the proceedings by mandamus would become as common as actions of assumpsit against individuals, in other words, that by indirection claimants could accomplish their purpose of suing the Government although the Government had not given its consent to be sued.

Now, in the Philippine Islands they have the same kind of an accounting system that we have here. In fact, section 24 of the Jones Law was modeled on our system as it has existed since 1879. The Jones Act provides that "No moneys can be taken out of the Philippine treasury without the consent of the auditor." But in a recent case, the one the Senator referred to, the Ynchausti case, and also the city of Manila case, the auditor was commanded and required by the Supreme Court of the Philippines, a divided court, to countersign warrants and pay money in the Ynchausti case to a steamship company in settlement of a customer's claim which he had held to be improper. In the other case he was required to transfer and pay over to the city of Manila certain moneys when he was required to enforce settlements between the city of Manila

and the metropolitan water district, and he had ruled that the money belonged to the water district.

Senator BINGHAM. That is a power not possessed by any court in the United States, isn't it?

Mr. McGUIRE. It is a power possessed by no court in the United States, except that we have had in the last year, since the establishment of the General Accounting office, a few cases similar to the case of *Smith v. Jackson* (241 Federal, 747; 246 U. S. 388). That case is one where a mandamus was brought against the auditor for the Panama Canal. He was not an auditor in the strict sense, because after he had settled a claim it had to be settled by the Auditor for the War Department, now the comptroller. He was not a disbursing officer. He attempted to withhold part of the salary of a judge down there and the district court for the Canal Zone issued a mandamus and required this auditor to pay the salary. But, as I say, he was not an auditor for the United States Treasury; nor was he an auditor in the sense that the Auditor of the Philippine Islands is an auditor.

There have been several cases of lower courts following the *Smith versus Jackson* case. A certain naval officer brought an injunction against the comptroller here in the courts of the District of Columbia. The Court of Appeals held in *McCarl v. Cox* (8 Federal, (2d) 669), that the injunction would lie. An application was made to the Supreme Court for a writ of certiorari to review the judgment, but it was denied. Of course, the auditor of the Philippine Islands does not pay army or navy officers. At the same time, refusing to pay claims, such as the *Ynchausti* case and the *Manila* case in the Philippine Islands involving the exercise of judgment and discretion.

Senator LENROOT. Isn't the distinction whether it is a purely ministerial act? Generally speaking if the official has no judgment to exercise, no action will lie.

Mr. McGUIRE. Generally speaking. However, the Supreme Court said in the *Brashear* against *Mason* case that even if the claim be provided for such suits or for the payment of general appropriations in such manner.

Senator LENROOT. There would have to be an appropriation by Congress?

Mr. McGUIRE. Under Article I, section 9, of the Constitution; yes.

Senator LENROOT. If there was one and if it was purely ministerial, then would a mandamus lie?

Mr. McGUIRE. Then a mandamus would probably lie under the decisions as they now stand. You can see, however, that the auditor or comptroller performs some judicial duties in settling these claims and accounts, because, as you know, they must determine the validity of the claim against the Government. They must also determine whether there is any appropriation, whether the appropriation has been exhausted, etc. Of course, if he is required by an extraordinary writ to draw a warrant for the payment of a claim, he would have to draw it whether there was any money there or not or else go to jail.

This bill, in my opinion, does not increase the powers the auditor for the Philippine Islands is supposed to have under the Jones law, because, as I say, up until within these recent cases, this last year—and they only relate to the pay of Army and Navy officers—there has been no writ in the history of the United States issued against the accounting officers. Such writs were expressly denied in *United States v. Lynch* (137 U. S. 280). The Federal Government had given its consent to be sued in the Court of Claims, so it was believed that the language was “final and conclusive on the executive departments,” and the courts, having nothing to do with appropriations, gave the auditor over there the same power as that possessed by the accounting officers of the Treasury, now the Comptroller General. But the courts seem to think that they have a right to review by extraordinary judicial process, with the result that its settlements are not final and conclusive and the Government is being sued without its consent.

Furthermore, in these cases—for instance, in the case of the city of Manila—the court did not attempt to determine the merits of the claim against the Philippine Islands. It held that the money should be paid and the auditor there was authorized by act of the Philippine Legislature itself to enforce settlements between these municipalities of the Government.

The court said that if the water district had a claim against the city it should sue the city. Such a suit would be somewhat like the War Department here suing the Navy Department. It would be foolish for the War Department to sue the Navy Department, when the Government has its machinery to settle that claim and such machinery has been in existence and operation since the beginning of the Government. If the War Department was indebted to the Navy Department, such indebtedness would be settled by the Comptroller General who would enforce his settlement by debiting the appropriation of the War Department and crediting the proper appropriation of the Navy Department.

The CHAIRMAN. Then, it is your contention, if I may interrupt you right here, that this bill, if enacted into law, proposes to give the power to the auditor which he heretofore has been assumed to have already?

Mr. McGUIRE. Exactly. It simply clarifies the power that he is supposed to have already.

Senator LENROOT. Has the auditor heretofore exercised the power of judgment and discretion upon the merits of claims?

Mr. McGUIRE. Yes. He denied the claim in the customs case and decided in favor of the water district in the other case.

Senator LENROOT. Has this been the accepted practice in the Comptroller's office?

Mr. McGUIRE. Yes. It has been his practice to settle all claims in which the government of the Philippine Islands is interested either as debtor or creditor.

Senator LENROOT. In other words, it does not accept the judgment of the heads of departments or of administrative officials as final in any case?

Mr. McGUIRE. No.

I would like to cite the language of Chief Justice Taft at page 81 of his book on “Our Chief Magistrate and His Powers” with

reference to the authority of the former auditors and comptrollers of the Treasury, now the Comptroller General:

Then consider the drawing of money from the Treasury Department under an appropriation act. The drawing of the warrant must be approved by the Comptroller of the Treasury (now the Comptroller General). It is for him to say how the appropriation act shall be construed and whether the warrant is lawful and whether the money can be drawn. The Comptroller of the Treasury is an appointee of the President, and in a general sense is his subordinate. If the President does not like him as a Comptroller, he can remove him and with the consent of the Senate put in another one, but under the act of Congress creating the office, the President can not control or revise the decisions of this officer. His work is like the work I have referred to, quasi judicial. If the claim is rejected by him, the claimant may in some cases carry his claim into the Court of Claims—

I notice that he says, "In some cases"—

but if he decides for the claimant, the public and those interested in maintaining the side of Government have no appeal, and his decision is final.

I should also like to cite the language of a report of the House of Representatives Committee on Revision of the Laws in a report dated February 16, 1869, republished in 26 Congressional Record 4342, as follows:

* * * power in the head of the War or any other department to set aside and change the findings of the accounting officers of the Government at war with the whole principle upon which the system is based; that the allowance and settlement of the disbursement of all public funds should be vested wholly in a set of officers other and different from those who made the expenditure. If their allowances and settlements can be set aside and changed by the head of the department under whose direction the money was paid, or the claim accrued, then the whole system of checks to improper expenditures, which it was supposed had been established, falls to the ground.

Congress has always reserved to itself the right of the Comptroller General to entertain an appeal from the Comptroller of the Treasury, either to clarify the law or allow a particular claim.

Now, in tort cases, it has been held that the claims can either be settled by the comptroller or by Congress. There are certain classes of claims, such as loss of private property and things like that, that are settled administratively; that is, by the Comptroller General.

Senator LENROOT. It is generally true that claims for unliquidated damages can be brought in court?

Mr. McGUIRE. Yes. If it is for unliquidated damages the court can liquidate them unless it arises in tort.

Senator LENROOT. Could these cases that arise in the Philippines, if they had arisen in the United States courts, have resorted to the Court of Claims?

Mr. McGUIRE. Yes. If the Ynchausti case had originated in the United States, its claimant could have resorted to the courts. I do not think the Manila case could have been entertained by a court, because one department has no right to sue another department of the Federal Government.

Senator LENROOT. Could they have resorted to the Court of Claims in these particular cases?

Mr. McGUIRE. In the Ynchausti case?

Senator LENROOT. Yes. Could they have resorted to the Court of Claims in that case?

Mr. McGUIRE. Yes.

Senator LENROOT. So, they have the same remedies in the Philippines with reference to the Court of Claims—

Mr. McGUIRE. No. The Philippines have no court of claims.

Senator LENROOT. That is what I am getting at. If it had arisen in this country, they could have in the one case resorted to the Court of Claims?

Mr. McGUIRE. In the Ynchausti claim their remedy would be—

Senator LENROOT. That is for refund?

Mr. McGUIRE. Yes; for refund. The remedy would be to appeal to the Governor General. That appeal was not taken.

Senator LENROOT. So there was no judicial review permitted in the Philippines?

Mr. McGUIRE. No judicial review.

Senator LENROOT. Where there would have been one, according to a line of cases in this country?

Mr. McGUIRE. Strictly speaking, it is not a judicial review.

Senator LENROOT. A judicial determination?

Mr. McGUIRE. Yes; a judicial determination.

Senator BINGHAM. I understand that they did have an appeal to the Governor General, which was not taken.

Senator LENROOT. I am speaking about the action of the courts in the Philippines, whereas if the case had arisen in this country they could have gone to the Court of Claims.

Mr. McGUIRE. In the other case Ynchausti would have had to go to the Philippine Legislature for legislation had its Governor General sustained the auditor just as, prior to the establishment of the Court of Claims in this country, a claimant was required to go to Congress for legislation.

Senator BINGHAM. I notice that Senator Osmena says that in this proposed legislation there are several clauses which would clearly confer upon the auditor of the Philippine Islands very important additional powers over those that the Comptroller General of the United States has. Do you understand that statement?

Mr. McGUIRE. I do not know of any additional powers that he would have except the one pointed out, which is really a duty rather than a power, that of bringing to the attention of heads of departments any expenditures that he thought were irregular, etc. However, the Comptroller General of the United States is required by Congress to report to it every expenditure and every contract made in violation of law.

Senator LENROOT. There is no appeal from the Comptroller General in the United States, while there is one in this bill?

Mr. McGUIRE. There are two in this bill; one to the Governor General and one to the Comptroller General. Of course, under the existing law if the Governor General disagrees with the auditor, then he must transmit it to the Secretary of War. The Secretary of War is not a judicial officer, nor does he normally perform accounting duties. So, it was believed to be more satisfactory to the people of the Philippine Islands and to assure them of semijudicial determination in substituting the Comptroller General as an appellate official who is performing like duties in the United States and who would be familiar with accounting problems.

The CHAIRMAN. I wonder whether at this point of your remarks I had not better insert in the record sections 24 and 25 of the existing law. You have been referring to those sections.

Mr. McGUIRE. Yes.

The CHAIRMAN. I will insert them at this place.
(The law referred to is as follows:)

[PUBLIC No. 240; 64TH CONGRESS]

AN ACT To declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those Islands.

SEC. 24. That there shall be appointed by the President an auditor, who shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source of the Philippine government and of the provincial and municipal governments of the Philippines, including trust funds and funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the government or the Provinces or municipalities thereof. He shall perform a like duty with respect to all government branches.

He shall keep the general accounts of the government and preserve the vouchers pertaining thereto.

It shall be the duty of the auditor to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant.

There shall be a deputy auditor appointed in the same manner as the auditor. The deputy auditor shall sign such official papers as the auditor may designate and perform such other duties as the auditor may prescribe, and in case of the death, resignation, sickness, or other absence of the auditor from his office from any cause, the deputy auditor shall have charge of such office. In case of the absence from duty, from any cause, of both the auditor and the deputy auditor, the Governor General may designate an assistant who shall have charge of the office.

The administrative jurisdiction of the auditor over accounts, whether of funds or property, and all vouchers and records pertaining thereto, shall be exclusive. With the approval of the Governor General he shall from time to time make and promulgate general or special rules and regulations not inconsistent with law covering the method of accounting for public funds and property held in trust by the Government or any of its branches: *Provided*, That any officer accountable for public funds or property may require such additional reports or returns from his subordinates or others as he may deem necessary for his own information and protection.

The decisions of the auditor shall be final and conclusive upon the executive branches of the Government, except that appeal therefrom may be taken by the party aggrieved or the head of the department concerned within one year, in the manner hereinafter prescribed. The auditor shall, except as herein-after provided, have like authority as that conferred by law upon the several auditors of the United States and the Comptroller of the United States Treasury and is authorized to communicate directly with any person having claims before him for settlement, or with any department, officer, or person having official relations with his office.

As soon after the close of each fiscal year as the accounts of said year may be examined and adjusted the auditor shall submit to the Governor General and the Secretary of War an annual report of the fiscal concerns of the Government, showing the receipts and disbursements of the various departments and bureaus of the Government and of the various Provinces and municipalities, and make such other reports as may be required of him by the Governor General or the Secretary of War.

In the execution of their duties the auditor and the deputy auditor are authorized to summon witnesses, administer oaths, and to take evidence, and, in the pursuance of these provisions, may issue subpoenas and enforce the attendance of witnesses, as now provided by law.

The office of the auditor shall be under the general supervision of the Governor General and shall consist of the auditor and deputy auditor and such necessary assistants as may be prescribed by law.

SEC. 25. That any person aggrieved by the action or decision of the auditor in the settlement of his account or claim may, within one year, take an appeal in writing to the Governor General, which appeal shall specifically set forth the particular action of the auditor to which exception is taken, with the reason and authorities relied on for reversing such decision.

If the Governor General shall confirm the action of the auditor, he shall so indorse the appeal and transmit it to the auditor, and the action shall thereupon be final and conclusive. Should the Governor General fail to sustain the action of the auditor, he shall forthwith transmit his grounds of disapproval to the Secretary of War, together with the appeal and the papers necessary to a proper understanding of the matter. The decision of the Secretary of War in such case shall be final and conclusive.

Senator LENROOT. So you say, Mr. McGuire, that this bill in fact confers less power upon a supposed auditor than is now exercised by the Comptroller General, so far as his final authority is concerned?

Mr. MCGUIRE. I do not think that as far as final authority is concerned the auditor in this bill will have any more power than he has under the Jones Act. The auditor has certain administrative duties with reference to the auditing of property accounts whereas now the Comptroller General of the United States does not audit property matters. So that is one difference in their duties.

The CHAIRMAN. Are there any other questions that any member of the committee desires to propound to Mr. McGuire?

Senator BAYARD. May I ask him one question?

The CHAIRMAN. Yes, Senator Bayard.

Senator BAYARD. On page 9, the next to the last sentence, it reads like this: "The decision of the Comptroller General of the United States in such cases shall be final and conclusive." That means of course, except that review may be had by a court of law as to the legality of the decision?

Mr. MCGUIRE. There is really no review, Senator. The Philippines have no court of claims, you see.

Senator BAYARD. You misunderstand me. I am reading from the proposed law.

Mr. MCGUIRE. Yes.

Senator BAYARD. It gives this right of appeal from the Governor General to the Comptroller General of the United States and then it says that the decision of the Comptroller General of the United States shall be final and conclusive. I suppose that that means that it is final and conclusive except that a man may test the legality of the decision from an accounting point of view?

Mr. MCGUIRE. He could not test the legality of a decision unless it was a ministerial act to be performed.

Senator BAYARD. That is what I mean.

Mr. MCGUIRE. Or unless there was a provision in the law of the Philippine government that the government could be sued. There is no such provision in it. You take a tort claim against the United States. If the Comptroller General should decide a tort claim, they can not test the legality of his decision in law. They would have to come to Congress to the Committee on Claims to get an appropriation.

Senator BAYARD. This language which I have just quoted from is similar to the law governing the action of the Comptroller General in regard to affairs wholly in the United States?

Mr. McGUIRE. It is exactly similar, except there has been dropped from the law as it now stands in the Jones Act the clause "on the executive departments." That was dropped because the Philippine supreme court in these cases undertook to review the auditor of the Philippine Islands, which the courts in this country do not do.

The CHAIRMAN. Are there any further questions? Thank you, Mr. McGuire.

We shall next hear from Mr. Guevara, Resident Commisisoner from the Philippine Islands.

**STATEMENT OF HON. PEDRO GUEVARA, RESIDENT COMMISSIONER
FROM THE PHILIPPINE ISLANDS (resumed)**

Mr. GUEVARA. Senator Osmena has given the committee our point of view fully in regard to this question. We believe that consideration of this bill by the committee should be postponed until the next session of Congress, in order that the people of the islands, through their representatives, may express their point of view in regard to this bill.

Anyway, I wish to advance the idea that, in my opinion, the proposed bill increases the power of the auditor in this way: First, in the existing law the jurisdiction of the auditor of the Philippine Islands is limited to the executive branches of the government, while in the proposed bill the jurisdiction of the auditor of the Philippine Islands extends to all branches of the government. Therefore, any decision, adjustment, or settlement made by the auditor of the Philippine Islands will prevent any action by the courts or by the legislature itself, because its decision is binding on all branches of the government.

Second, the auditor of the Philippine Islands is given judicial power. In the existing law he is not authorized to decide any case, but in the proposed law he is given the power to decide any case brought before him.

The insertion of the word "decision" in the proposed bill gives greater power to him than that enjoyed by the Comptroller General of the United States. The word "decision" means "judicial process" in my belief; and that word has been inserted in the proposed bill and the words "upon the executive branches of the government" stricken out.

Third, the auditor has the right to appeal to the Comptroller General against a decision rendered by the Governor General, while a claimant—he may be a private citizen—has no right to appeal to the Comptroller General against the decision of the auditor for the Philippine Islands confirmed by the Governor General. These points are very important in my belief; they deserve mature consideration. I believe that the Philippine Legislature should be heard on this question.

Also I wish to call the attention of the committee to the fact that the district courts of this country have, in certain cases, concurrent jurisdiction with the Court of Claims, even with regard to matters already passed upon by the Comptroller General. In 24 Statutes, 505, there is a section giving the District Court certain concurrent jurisdiction with the Court of Claims. Should it be necessary we will submit more fully our views on this matter.

The CHAIRMAN. Particularly this pending bill?

Mr. GUEVARA. Yes; just this pending bill, comparing it with the existing law.

The CHAIRMAN. The committee has requested you to prepare and file that as soon as possible so as not to delay any action that might be taken.

Mr. GUEVARA. Yes.

Senator LENROOT. Is it your present view that the present law is satisfactory in view of this decision?

Mr. GUEVARA. The law has been working satisfactorily for the last 25 years.

Senator LENROOT. What have you to say as to the statement made here that until the time of this decision the auditor did exercise the power of judgment and review and now under the decision he is not permitted to?

Mr. GUEVARA. His decision can be reviewed by the Supreme Court of the Philippine Islands.

Senator LENROOT. No. Was the statement correct that up to the time of this decision the auditor did exercise the same power that is proposed to confer upon him now?

Mr. GUEVARA. No. The other side made that statement.

Senator LENROOT. Was his attempt to set aside the determination in this customs case something entirely new, something that he had never tried to do before?

Mr. GUEVARA. He never exercised that power with regard to customs duties.

Senator LENROOT. That was the way the case arose—from the refund of certain customs that they claimed the head of the division had allowed and the Auditor had disallowed?

Mr. GUEVARA. Disallowed; yes, sir.

Senator LENROOT. Had he ever exercised a similar power before that time?

Mr. GUEVARA. He had never exercised such a power with reference to customs duties.

Senator LENROOT. He never had attempted it before?

Mr. GUEVARA. Never.

Senator LENROOT. He had always accepted the findings and determinations of the head of the customs and internal revenues departments as final?

Mr. GUEVARA. Yes, sir.

This Ynchausti case is now pending before the Supreme Court of the United States.

The CHAIRMAN. Well, Commissioner, under the present situation, in effect, the Government of the Philippine Islands can be sued, can't it?

Mr. GUEVARA. The government of the Philippine Islands can be sued by authority of the Philippine Legislature, by anybody.

The CHAIRMAN. But, as I understand it, under the present state of the law, without giving any express authority or without creating any Court of Claims, there is power of review which the court in this case has claimed to exercise over the decisions of the Auditor, and in effect, the government is suable without its own consent. Doesn't it work out that way?

Mr. GUEVARA. No. I don't think so.

Senator LENROOT. But this case arose out of a mandamus on the theory that it was performing a purely ministerial act.

Mr. GUEVARA. In this case Mr. Ynchausti has contended before the court that the Auditor has exercised a power that was not granted to him by law.

Senator LENROOT. But you say he has never attempted to exercise such a power before?

Mr. GUEVARA. Never before in a case like this; no, sir.

In this proposed bill we believe that the Auditor of the Philippine Islands will have more power than the Governor General himself.

Senator BINGHAM. There are some people in Washington who think that the Comptroller General in the United States has more power than anybody else in the United States.

Mr. GUEVARA. Congress can remove him at any time.

Senator LENROOT. All we can do is to kick him out. We can not review his acts.

Mr. GUEVARA. But we can not kick out the Auditor for the Philippine Islands because we have no power.

The CHAIRMAN. Is there any further question of the commissioner? All right. We will next hear from Major Hedrick.

STATEMENT OF MAJ. LAWRENCE H. HEDRICK, UNITED STATES ARMY, ON DUTY IN THE OFFICE OF THE ADJUTANT GENERAL OF THE ARMY

The CHAIRMAN. What is your official station?

Major HENDRICK. I am on duty in The Adjutant General's office.

The CHAIRMAN. Whom do you represent?

Major HEDRICK. I think I can say—

The CHAIRMAN. I made a request of the Secretary of War—

Major HEDRICK. I think I can say that I am here for The Adjutant General's office, in that capacity. I am the attorney in charge of the Ynchausti case and the case of the city of Manila *v.* the Metropolitan Water District, now on petition for writ of certiorari in the Supreme Court.

I am not here, gentlemen, as either proponent or opponent of the bill, but simply to clear up a few erroneous ideas that I think have inadvertently been given to the committee.

First, in connection with the last matter that the Senator asked with reference to whether or not the auditor of the Philippines had ever attempted to exercise the power that he attempted to exercise in the Ynchausti case: What we consider is probably the best-considered case by the Philippine Supreme Court on the duties of the auditor is the case of *Lamb v. Phipps*. That case was decided several years ago, and arose on the identical question which is now presented in the Ynchausti case. In that case the supreme court said: "The money which the collector of customs is now attempting to get out of the public treasury, based upon said permanent appropriation"—that is, the appropriation about 1902 by the Philippine commissioner for the payment of refunds and taxes or duties erroneously or illegally collected—"is simply appropriated to meet the refund of moneys erroneously collected. If the legislature intended that the auditor should be bound by the decision of the col-

lector of customs, it would have so stated in plain terms. In view of the fact that under the law in force in the Philippine Islands, no money can be paid out of the treasury except by warrant, and no such warrant is valid unless it is countersigned by the auditor, it is plainly evident that, in the absence of anything in the law to the contrary, the auditor is fully within his authority in refusing to countersign such warrant until and unless he has satisfied himself that the money in question was, in fact and actually, erroneously collected. No effectual check can ever exist upon the expenditure of public funds in any case where the same officer authorizes the expenditures and then audits, or controls the audits of the accounts." That, of course, gentlemen, is the fundamental principle underlying our system of checks and balances in the United States.

Senator LENROOT. May I ask at this time, did the recent decision reverse that?

Major HEDRICK. The recent decision did not distinctly or actually in words reverse the *Lamb v. Phipps* case, but their decision is absolutely contrary to the *Lamb v. Phipps* case.

Senator LENROOT. Did they refer to it in the decision?

Major HEDRICK. The dissenting opinion referred to it.

Senator LENROOT. Not the majority opinion?

Major HEDRICK. No; that did not. I think there was some little reference made, but no distinct mention was made of it.

The situation in the Philippine Islands with reference to the auditor, as we view it, must be looked upon as the situation in the United States prior to the establishment or creation of the Court of Claims. With regard to that we believe that Congress, and Congress alone, has authority to create a court of claims in the Philippine Islands and that the Legislature of the Philippine Islands has been given general legislative powers, if those powers or when the exercise of those powers are not inconsistent with the organic act. The creation of a court of claims, as we view it, would be in direct contravention to the powers of the auditor, as conferred by Congress in the organic act.

There have been some attempts to give the courts in the Philippine Islands court of claims jurisdiction. That has not been accomplished, except that there is now, I think, on the statutes a bill which provides that if the auditor does not pass upon a question within 60 days after it is submitted to him they can take it into court. The auditor has prevented any cases being taken into court by passing upon them within 60 days, although it is contended that that bill, that law of the Philippine Legislature, is in contravention of the organic act and is said to be unconstitutional, using the organic act as their constitution.

Senator BINGHAM. Are you going to touch on the question as to the ways in which the auditor has exercised his powers up to the time of this first reversal by the courts?

Major HEDRICK. Yes, sir. I read the case of *Lamb v. Phipps*, but I forgot to say that that was the case where the auditor had exercised the identical power that he exercised in the *Ynchausti* case.

Senator BINGHAM. What was the year of that case?

Major HEDRICK. I can not give you the exact year, Senator, but it is 8 or 10 years ago.

Senator BINGHAM. Are there any other cases where the auditor has exercised this power?

Major HEDRICK. There have been a few cases where the auditor has been mandamused prior to the recent cases. In two or three of them his acts were considered to be purely ministerial. In one case an official, an American, who was appointed an official in the Philippines, had either resigned or his appointment had run out and he was about to come home. The auditor had audited his accounts and had fixed the amount that was due. This official had some other relations entirely separate and distinct from the Government, and the auditor refused to countersign his warrant until he squared up these other things, which was a matter over which the auditor had no control whatever. It was probably being done in order that all American officials should leave the islands with a clean slate behind them. Practically the action of the auditor might have been correct, but legally it was entirely wrong. He was mandamused and the Supreme Court held in this case that there was nothing left for him to do, no discretionary act for him to perform. He had already passed upon this account and had found the amount due, and after that the mere countersignature of the warrant was a purely ministerial act, which, of course, was a correct decision.

As to the exercise of the powers, I do not think that anyone will contend for one moment that the auditor has not been exercising these powers consistently right along. There has been some friction, I think you will all recall, about the auditor's exercise of certain powers with reference to the \$1,000,000 independence fund.

Senator BINGHAM. What was that?

Major HEDRICK. That was the fund that the legislature passed an appropriation—correct me if I am wrong in this; I don't recall the facts very clearly—it passed an act appropriating a million pesos, I guess it was, to be used in gaining independence for the Philippine Islands. The auditor refused to allow any money to be drawn against that fund, on the ground that it was not authorized. The legal reasons connected with that I can not give, because I only know that and I simply cite it to you to show his exercise of powers with reference to the expenditure of funds.

Senator BINGHAM. What was the eventual outcome of that case?

Major HEDRICK. It was not spent.

The CHAIRMAN. Under whose jurisdiction was this 1,000,000 pesos to be expended?

Major HEDRICK. I don't recall.

Mr. GUEVARA. By the legislature.

The CHAIRMAN. The legislature appropriated 1,000,000 pesos and left it so that the legislature was to say how the money was to be spent?

Mr. GUEVARA. It was to be spent under the direction of the Speaker of the House and the President of the Senate.

Major HEDRICK. That matter was never taken into court.

Mr. GUEVARA. Subject also to the auditor's review in case the money was not expended as appropriated by the law.

The CHAIRMAN. And the auditor held against its legality?

Mr. GUEVARA. No. The auditor held that the money can not be spent as appropriated by the legislature because it is against the Jones law.

Senator LENROOT. Then, you want to modify your testimony a few minutes ago that the auditor did not exercise discretionary powers prior to the time of this case?

Mr. GUEVARA. Not in this kind of case. The Ynchausti case was a private claim against the Government. Certain taxes collected by the collector of customs were supposed to be illegally collected.

Senator LENROOT. But the case which he read was just such a case.

Mr. GUEVARA. The Ynchausti case?

Major HEDRICK. No. I read the case of Lamb versus Phipps.

Senator LENROOT. That is certainly such a case.

Senator BINGHAM. You gave the committee the impression that the auditor had recently started to exercise additional powers which he never had before. Is that not a correct statement of the case?

Mr. GUEVARA. We do not know about this case that Major Hedrick read. We were simply discussing the Ynchausti case.

Major HEDRICK. No. That was the Lamb versus Phipps case, eight or ten years ago. The situation, I think, can be better explained by showing that—which, I think, is in entire accord with the facts—the auditor has been exercising these powers right along. The attempt to take these matters into court is a new development in the situation. It was for that express reason that matters which had been by reason of the fact that the auditor had been exercising those powers right along, thought to be clear until the Supreme Court of the Philippine Islands under these two recent decisions has not found them clear, that this clarification is sought.

Senator BINGHAM. Is the present auditor the same one who disallowed the million peso fund?

Major HEDRICK. Yes.

Senator BINGHAM. That accounts for his unpopularity?

Major HEDRICK. I don't think he gained any popularity by that act.

Now, we know that changes in this law, as for instance to add—and I think you will all agree that it would not seem normally necessary to add it—to the word "accounts" where he shall audit, in the present law—it says "accounts" with reference to expenditures—no one had ever thought prior to that that it did not give him authority to audit claims of anyone who submitted a claim; but in the Ynchausti case the supreme court defined the word "accounts" and held that an account was only a paper upon which or a statement including items both of debit and credit side. With regard to the claim in the Ynchausti case, the decision stated, "In the instant case, there was only one item which grew out of one transaction, and the only question involved was the legality of the claim. Hence, petitioner's claim was not an account within the definition of the word."

Now that, of course, would deprive the auditor of any control whatsoever over any expenditure upon a voucher which included only one item. Under their definition as to an account—that it includes debits and credits—if there were no debits or credits, only debits, he would have no control over them. They also defined the word "audit" to mean merely a mathematical calculation in check-

ing over the figures; and in that we found that the auditor's duties with regard to this claim were purely ministerial.

In connection with the Ynchausti matter an entirely different question—the only question, I think, as I view it, that there is in the case—is whether or not that particular class of claims is a class of claims set apart to be handled in an entirely different way than the general run of claims. That is one class of claims in which the Philippine Legislature and the Congress have consented that the Philippine government be sued, and they only have an appeal from the Collector of Customs to the courts of first instance.

That, I think, answers the statement of the gentleman that it has been in successful operation for 25 years. That is perfectly true since the present law—of course the present law—only since the organic act—I think the organic act gave the auditor a little greater power than he had before; but, generally speaking, he has had more powers and up until now the courts have not attempted to assume jurisdiction.

Senator BINGHAM. May I ask at that point, has there been any change in the personnel of the higher courts which might have led to a different attitude on this question from what it was formerly?

Major HEDRICK. Yes, sir. The writer of the majority opinion in both of these cases has only been on the Supreme Court three or four years, I think; not longer than that. How long has Justice Jones been on the Supreme Court?

Mr. GUEVARA. I guess not for five years now.

Senator BINGHAM. Have there been any other changes in the personnel of the court?

Major HEDRICK. Oh, yes. There has been considerable change since the Lamb versus Phipps case. Justice Johnson, who was relieved just a little while ago, was on the court when the Lamb versus Phipps case was decided, and he wrote the dissenting opinion in the Ynchausti case. Justice Offstrand wrote some of the opinion in the City of Manila case. Justice Johnson did not sit in that case.

The CHAIRMAN. I think I ought to interrupt you at this point. The Senate will meet in a few moments. How much more time will you need to present the matters that you desire to present?

Major HEDRICK. Not very much more; 10 or 15 minutes.

The CHAIRMAN. We want to give you full time.

Senator BINGHAM. May I ask that Mr. Maguire give to the stenographer for the record a discussion of the point brought out by Senator Guevara as to the concurrent jurisdiction of the District Court and the Court of Claims?

The CHAIRMAN. Will you take note of that request?

Mr. MAGUIRE. Do you want it now?

Senator BINGHAM. No.

The CHAIRMAN. Submit a little statement and put it in the record. That is all for the present measure.

(Thereupon, at 12 o'clock noon, the committee adjourned subject to the call of the Chair.)

AUDITOR FOR PORTO RICO AND THE PHILIPPINE ISLANDS

TUESDAY, APRIL 27, 1926

UNITED STATES SENATE,
COMMITTEE ON TERRITORIES AND INSULAR POSSESSIONS,
Washington, D. C.

The committee met, pursuant to call, at 10.30 a. m., in the committee room, Capitol, Senator Frank B. Willis presiding.

Present: Senators Willis (chairman), Bratton, Bingham, Butler, Harris, Broussard, and Nye.

The CHAIRMAN. The committee will please be in order. The hearing this morning is particularly given over to our friends from Porto Rico, who desire to present various matters. The specific bill before the committee is S. 3847, to amend and clarify the existing laws relating to the present duties of the auditor for Porto Rico and of the auditor for the Philippines. In as much as Major Hedrick had not quite finished his statement on that bill at the previous hearing, we will first hear him, and as soon as he has finished we will give the hearing to the various gentlemen from Porto Rico.

Major Hedrick, you may proceed now.

STATEMENT OF MAJ. LAWRENCE H. HEDRICK—Resumed

Major HEDRICK. I want just briefly to point out what I think is the real object of this bill. I want to say to you gentlemen that the accounting system of the Philippines, just as the accounting system in the United States, to my mind, should be kept entirely separate and distinct from any theory of a suit against the Government or the Court of Claims. The accounting system of the United States is practically the same as it has been down through the history of the country. It ran along together with the Court of Claims, but the two are not in any way intermingled, and that is exactly what has happened in the Philippine Islands at the present time. The courts are, in my opinion, attempting to intermingle the day-in-court theory and the accounting system and to assume jurisdiction which has not been given to them heretofore.

That brings me to the reason for striking out of the present law the words "the executive branches of the government"; that is, the decisions of the auditor shall be final and conclusive upon the executive branches of the government. The Supreme Court, in the Ynchausti case, to which I have referred before, pointed out that provision in the law, in the organic act, and, while not directly, at least inferentially, made a claim that that was one of the reasons

that they assumed jurisdiction. They say in the majority opinion that, the law having defined and limited the finality and conclusiveness of the decision of the auditor to and upon the executive branches of the government only, it must follow that the appeal for which section 25—that is, the appeal to the Governor General and Secretary of War—provides is an appeal from a decision of the insular auditor, which would be final and conclusive upon the executive branches of the government only, and that it was never intended that the provisions for such an appeal should apply to questions which are purely judicial.

It was suggested the other day that the basis of the court's decision was that the auditor's actions in these cases were ministerial, and hence controlled by mandamus. That is true in one sense and not true in another. It is true that the court has held that his actions are ministerial, but analysis will show that they have held all of his actions practically pertaining to claims are ministerial. That, of course, is not the theory which our courts in this country have followed.

That brings us to the point, then, where we see that the courts there are assuming a jurisdiction which our courts in this country have never sought to assume and never would assume.

For that reason it is necessary to clarify the law so that there can be no question at all about it.

In the Ynchausti case, I might inform the committee, the Supreme Court granted the petition for the writ of certiorari yesterday. That, we hope, will enable us to clear up one part of the question, but it is not broad enough to clear it all up. The case is not broad enough. Neither is the case of the City of Manila *v.* the Auditor broad enough. That only deals with settlements of accounts between different governmental entities. So there still is this broad question of general claims that we do not know what we will do about.

THE CHAIRMAN. You feel, then that notwithstanding the action had by the court, there is still a necessity for legislation of this character?

Major HEDRICK. I do, Senator. There are a number of things which the court will not necessarily pass upon in either one of these cases that still remain very dubious.

THE CHAIRMAN. I wonder if it would be convenient for you to place in the record some time in your statement the opinion of the court and the dissenting opinion in this Ynchausti case?

Major HEDRICK. Yes. I will give it to you right now. This is the official transcript of the record, including both opinions.

(The opinions referred to are on file with the clerk to the committee, but are not printed because of their length.)

Senator BRATTON. Of course, you interpret the fact that the Supreme Court granted the writ of certiorari yesterday as indicating at least that there is some question in the mind of the court as to the soundness of that decision?

Major HEDRICK. Yes; of course. That is all.

Senator BRATTON. That is all, but it is indicative to that extent?

Major HEDRICK. Yes. It is not in any sense a decision upon the question at all.

Senator BRATTON. No. Cases are frequently defined by the Supreme Court where writs of certiorari have been issued where, if the

court did not entertain some doubt as to the soundness, it would have denied the writ.

Major HEDRICK. Yes. That raises the next question, and the dissenting opinion says that after having granted it, we still would not have the questions that are here determined at all.

Senator BROUSSARD. Is it your purpose to vest in this jurisdiction the same authority that is vested in this country?

Major HEDRICK. Yes. There is now, as was pointed out the other day, a little greater, not power, but duty, imposed on the Auditor of the Philippine Islands than exists in the Comptroller General, although with each it is simply a point of extravagant expenditures. But that already was in the present law and there was no change in that at all.

We believe that Congress intended when it passed the organic act, in very clear language, to give the auditor exactly the same powers that the Comptroller of the Treasury, now the Comptroller General, has. They make that statement in the organic act. We believe that Congress intended to create for the Philippine Islands identically the same accounting system as that of the United States; and that has been the operation of the law ever since its enactment until just recently.

There was a statement made the other day that the auditor had no power of review over a decision upon a claim of any of the heads of departments. I think that statement was inadvertent, because that is exactly what he was put there for—to have this power of review. He has it over the heads of departments. The collector of customs in the Ynchausti case is the one exception that the courts over there have denied so far.

Now in the case of the city of Manila *v.* the Auditor, that case illustrates another extent to which the courts are going. That is not the organic act, in fact, that they are practically setting aside, but an act of the Philippine Legislature coupled with the organic act. The laws of the Philippine Legislature provide that the city of Manila and the metropolitan water district shall be regarded as provinces for the purposes of the accounting law; and that they comprise only auditing districts. They also provide that the auditor is empowered to authorize the audits and enforce settlements of accounts subsisting between provinces, municipalities, bureaus, and offices of the Government. That is analogous to the power which the Comptroller General has here of settling accounts between our various departments, such as the War Department and the Navy Department; and from his decision in those matters there is no appeal, not even an executive or administrative appeal. In the Philippines there is an appeal to the governor general and the Secretary of War. But the courts in this case, in which the auditor had settled an account subsisting between the city of Manila and the metropolitan water district, set aside his action entirely and by a mandamus directed them to, in effect, settle it in a certain way. It absolutely makes that law inactive.

There was one other matter that came up the other day with respect to *Smith v. Jackson*, in which our courts and the Supreme Court sustained the granting of a mandamus against the auditor of the Panama Canal Zone. Mr. McGuire pointed out that the auditor

there was not an auditor in the sense that the auditor of the Philippine Islands is. He does not have the final say upon claims. When he passed upon claims they came to the old Auditor of the War Department and he was the one who actually passed upon them. There was, however, in that case another very distinct difference. The claim was one over which no discretion could be exercised. It was an express appropriation of an express amount to an express individual; that it, it was the salary of a judge of the Panama Canal Zone. There was no question that the individual was the judge in question, or that he was acting; so there was nothing for the auditor to pass upon. There the acts are purely ministerial. They would be in the case of any one.

I think, Senator, that unless you have something to ask, there is nothing more that I have to say.

The CHAIRMAN. Has any member of the committee any question? If not, you are excused, Major. We are very much obliged to you for your testimony.

Now the hearing will be continued, it being the idea that so far as possible the discussion shall be directed toward the bill S. 3847, which is already in the record.

We would like you gentlemen from Porto Rico to discuss this bill particularly, since it is before the committee; but you gentlemen have come a long way and if you have other matters in addition to this which you wish to discuss, I think the committee will be inclined to give you a good deal of latitude.

I shall call first on Gov. Horace M. Towner, Governor of Porto Rico.

STATEMENT OF HON. HORACE M. TOWNER, GOVERNOR GENERAL OF PORTO RICO

Governor TOWNER. Mr. Chairman and gentlemen of the committee: The legislature of Porto Rico a year ago passed an act really memorializing Congress with regard to some desired legislation. They had not had an opportunity to vote in support of it. Indeed, they had not formulated that legislation in the form of a bill or had it introduced, except the bill which had been introduced in the previous session and considered by the Senate and House of Representatives, and that was a bill for an elective governor. There were other bills, however, that pertained mainly to the administrative parts of the Government which had not been presented and considered.

So, as the legislative committee desired to come up and present very briefly again for your consideration the question of an elective governor, they started to formulate a bill which should embrace these other matters, to which your attention will be called now. Among those, Mr. Chairman, were some amendments to section 20 of our organic act, which is the section pertaining to the duties of the auditor.

Now, I might say that with regard to the provisions of section 20 of the organic act of Porto Rico, they differ considerably from the provisions of the organic act relating to the auditor of the Philippines. I think in almost every particular the Porto Rican bill con-

vers greater power as it now stands than is conferred upon the auditor in the Philippines's fundamental act. But some changes were thought beneficial and are among others to be considered and presented.

We were somewhat surprised when we heard about the introduction of this bill which is before the committee now—S. 3847—which provides for granting additional powers to the auditor, both of Porto Rico and the Philippines. The provisions of the bill that are inserted here relating to the duties and powers of the auditor are, in our judgment, not suitable for Porto Rico, and in some instances are entirely unnecessary. It will not be necessary for me to call attention as relates to the various provisions that we expected to incorporate in the amendment to the provision with regard to the auditor.

Now, I don't know just what will be your final judgment, gentlemen of the committee, about the matter. If we might be allowed to express our preference, we should be very glad indeed to have these bills considered separately; in other words, to act as you think best upon those parts of this bill that relate to the Philippine Islands, but to consider them along with the other propositions that we shall have to offer that refer to the auditor for Porto Rico. If in your judgment you think that probably the provisions should be in one bill regarding the auditors of both Porto Rico and the Philippines, then we would ask you to consider as a substitute for the provisions in 3847 the provision that we will call your attention to. That, of course, is a matter for your determination; and whatever you shall determine as the most advantageous and proper from your point of view, we shall be glad to acquiesce in them.

Now, I am going to call your attention as briefly as I can to the provisions of this act, H. R. 11610, which we desire to introduce, amending the provisions of our organic act affecting the auditor and his duties. They are not greatly changed. In fact, it would not be going too far to say that they are comparatively unimportant and that we would not insist on them at all unless something was to be done with regard to the auditor, and then we should like to have the changes made which we suggest, if it shall meet with your approval when you come to consider them.

The first paragraph relates to the appointment of the auditor. In the bill which is presented here, Senate bill 3847, the first change suggested is to raise the salary of the auditor from \$6,000 to \$8,000 a year. Permit me to say on behalf of our people that that will be rather unfortunate for us. I agree that it would be advisable that salaries should be raised. But here is the situation in Porto Rico: The heads of the departments receive \$6,000. The auditor now receives the same salary that the heads of departments do.

Senator BRATTON. When you say "heads of departments," Governor, you mean the heads of the departments of the government?

Governor TOWNER. Yes; exactly. We have a regular cabinet, with a commissioner, or, as you say, a secretary of education. We have an attorney general, who is head of the department of justice. We have the commissiomer of the interior, who has charge of all public works and matters of that kind, charge of all public lands, matters relating to the roads, and other important subjects of that character. Then, we have a department of health and sanitation. Those are the ordinary executive departments of government.

Senator BRATTON. They all get \$6,000?

Governor TOWNER. They all get \$6,000.

Senator BRATTON. Are they appointed or elected?

Governor TOWNER. Part of them are appointed and part of them are elected. The attorney general is appointed by the President. The auditor is appointed by the President. The secretary of education is appointed by the President. All other heads of departments are appointed by the governor.

Senator BRATTON. You feel that it would be unfortunate to provide that the auditor should get more salary than the heads of the general departments?

Governor TOWNER. Yes. Let me call your attention to this particular situation: Fortunately, we have for the auditor, for the attorney general, and for one of the justices of the supreme court, who is an American, we have private residences which they are furnished; so that really the auditor receives the benefit of that, which amounts to—well, it would amount to at least between one and two thousand dollars a year besides his salary. That is given to him as, of course, an addition to his compensation, and it is in fact an addition thereto. In that respect he already receives more than the other members. Now, to add \$2,000 to the salary, and then to take into consideration the fact that he receives this house, would raise his compensation practically to between nine and ten thousand dollars, almost as much as the governor receives, his salary being \$10,000. So, there would be a marked difference, as you see, between the salaries of the auditor and the other heads of departments having positions of like responsibility and character.

Now, gentlemen, I would be very glad indeed if you could raise the salaries of all these men. We are having difficulty to hold them. Some of our men are very much desired. The heads of the department of education or the department of health and sanitation would receive a very much larger compensation outside. The head of the Department of the Interior would receive a very much larger compensation. The head of the Department of Agriculture, I think, could get any salary that he had a mind to name if ever he was disposed to leave and go away. He left a salary of \$8,000 to take the position of Secretary of Agriculture for \$6,000; and I think he could get \$25,000 a year from the Cubans if he could be induced to leave. So, to raise the auditor's salary alone would present an inequality that I am afraid might increase the discontent of these men and make them feel that they were not fairly treated. They have been loyal. They are all remarkably efficient and very strong men. We are very unfortunate indeed in the heads of our executive departments. All of these men are now serving at a sacrifice to themselves, but with great honor, and that, of course, is something. To pass that. In the next paragraph there is a slight change in the organic act. The provision says:

He shall audit and settle all accounts pertaining to revenues,

and so forth, and then it tells what he shall audit—

in accordance with the law and administrative regulations all expenditures.

However, we thought that the same language used above should be used here; that is, that he should not only audit, but he should

examine, audit, and settle, that it should be in the second clause of that paragraph the same as in the first, in other words, putting it into harmony with the proposed extending of the powers of the auditor to that extent.

The CHAIRMAN. Just a minute. I don't understand. As I see it, in the first portion of the section the language is:

"Examine, audit, adjust, and settle.

Governor TOWNER. That is in your bill?

The CHAIRMAN. Yes. It is the same language in the latter part of the paragraph.

Governor TOWNER. Yes; it is in your bill, so there would be no difference between these; but I am calling your attention now to the difference between our bill and the organic act as it was.

The CHAIRMAN. Oh, I see. You don't object to this language here?

Governor TOWNER. No. I think not. In so far as they are the same, of course, we could not object at all.

The CHAIRMAN. No.

Governor TOWNER. Now, the next paragraph contains this provision:

The auditor shall keep the general accounts of the Government and preserve the vouchers and other papers pertaining thereto.

In the original organic act the provision was that the auditor should keep the general accounts of the Government and the words—be the custodian of and preserve the vouchers pertaining thereto were omitted.

Now, the auditor—and we have a new one, a man that the President just sent down there, a very excellent gentleman—and all these recommendations are joined in by him and also joined in by a man that we brought down from the States to assist in the treasury department. They have gone over them carefully, and they bring to the examination of these questions a high expert knowledge, and we have very great confidence in their ability to clearly and thoroughly understand the situation.

Here is the reason for the addition of these words to give to the auditor the preservation and custody of these vouchers: The habit had been there for a number of years that when these vouchers came from one of the departments, after they had been passed on by the auditor, they were sent back to that department. That was the method of preservation of the vouchers. Now, it seems that the better practice is that the one who last passes upon a voucher, in this case the auditor, ought to have the preservation and custody of all of the vouchers. In other words, we believe that they all should be kept under a single control and all be preserved in a single way, for the better preservation of them, as well as for the fact that they ought to be where the last action was taken with regard to them. So we have added at their suggestion the words that the custody and preservation of the vouchers should also be given to the auditor.

Senator BRATTON. In line 22, following the word "preservation," you say that he shall have custody of the vouchers.

Governor TOWNER (reading):

He shall be the custodian of and preserve the vouchers pertaining thereto.

I would suggest that that is well worthy, perhaps, of consideration with regard to your bill, if you retain the bill. Of course, that is an administrative matter and it is not really essential, but it is well worthy of consideration.

Senator BINGHAM. You suggest for the words "shall keep" the words "shall be the custodian of and shall preserve"?

Governor TOWNER. Yes.

preserve the vouchers and other papers pertaining thereto.

Senator BINGHAM. That is in the act—

other papers pertaining thereto?

Governor TOWNER. Yes.

Now, in the next paragraph, referring to the provision that the decisions of the auditor shall be final except for appeal therefrom: My attention was called to the fact that—of course you are considering this with regard to the bill that is before you, particularly—and I call attention to the change there made between our suggestion as to what ought to be contained in this under the organic act as it is now. However, what I say regarding it may be pertinent to the whole question and perhaps may throw some light on it for your consideration.

The paragraph relates to the decision of the auditor, which shall be final and conclusive except that appeal therefrom may be taken by the party aggrieved or the head of the department concerned within one year in the manner hereinafter prescribed. Now, the language in the Philippine bill was that the decisions of the auditor should be final and conclusive upon the executive branches of the Government. That was in the Philippine act, and constituted, of course, a limitation upon the powers of the auditor. However, it never was in our act, and it would be entirely unnecessary to change the act in regard to Porto Rico.

Now, there is another change, going back to the provision—I don't know what it is, but it is the provision with regard to giving the auditor power to summon witnesses and administer oaths. I notice that in both of the original organic acts of the Philippines and of Porto Rico the language was identical. It only extended down to the enforcing of the attendance of witnesses.

Now, let me show you exactly what that means: In the execution of his duties the auditor is authorized to summon witnesses, administer oaths, and take evidence, and in pursuance with these provisions can issue subpoenas and enforce the attendance of witnesses. There the provision stops.

Now, the auditor and Treasury officials both say that we ought to add these words—they say so because of the fact that in some of the investigations that they have been making, while they could summon witnesses and enforce the attendance of them, they could not compel the witnesses to produce books and letters, etc. The court held that they must be given that power by a specific provision; and so we have added in this provision:

and compel witnesses to produce books, letters, documents, papers, records, and all other articles deemed essential to a full understanding of the matter under investigation.

In any event, I think you will find that they should be added.

Senator BINGHAM. Will you read that again?

Governor TOWNER (reading):

And compel witnesses to produce books, letters, documents, papers, records, and all other articles deemed essential to a full understanding of the matter under investigation.

Senator BINGHAM. All other articles?

Governor TOWNER. Yes.

Senator BINGHAM. The usual phraseology of legislation is "to compel the production of books" etc. I suppose you have no objection to that?

Governor TOWNER. Oh, certainly none at all.

The CHAIRMAN. I am just a little curious to know what would be included in that "other articles."

Senator BROUSSARD. That might include automobiles.

Governor TOWNER. We have left unchanged the next provision, which under our organic act is section 21, which, however, you have dealt with in the bill which you have introduced. That provision, as it relates to the Philippine Islands, is that appeals from the auditor are said to be final when an appeal is taken and the governor and the auditor agree. If they do not agree, the appeal has to be sent to the Comptroller of the Treasury.

Now, our law is that the decision of the governor is final and there is no appeal from his decision regarding these matters. I don't know; you gentlemen are as well qualified, perhaps better, to determine that question than I am; but there never has been any appeal taken from the decision of the governor.

The provision of our organic act is that any person aggrieved by the action or decision of the auditor in the settlement of an account or claim may within one year take an appeal to the governor, which appeal shall specifically set forth the particular action of the auditor to which exception is taken, with the reason and the authorities relied on for reversing such decision; and the decision of the governor in such case shall be final except as to such rights of action as may be otherwise provided for by law. Of course, that does not take away any right that the courts might have.

With all due deference, gentlemen, it occurs to me that it would be unfortunate for us to change the existing law. In fact, with regard to all these matters, if you shall determine that it is best to copy the provision of the law regarding the auditor in your bill, then, of course, we shall have to ask consideration of these other matters in a separate bill, another bill; and, in fact, we would think it best if we might have the right to ask for all these amendments to the organic act in the same act, and therefore that we should be excluded from the present act and that it should apply alone to the Philippines.

Senator BINGHAM. May I interrupt you there?

Governor TOWNER. Certainly.

Senator BINGHAM. In connection with this proposition to grant an appeal from the governor to the Comptroller General, would you have any objections to the appeal being granted to the Court of Claims?

Governor TOWNER. Senator, I should object very much. You see, the difficulty is that most of these matters, and, in fact, all cases that come to me for decision, have been inconsequential cases, cases that ought to be decided immediately, cases upon some claim that some person has and the auditor says, "No. It can not be allowed because it is not within the purview of the statute." Then he appeals to the governor. Of course, it takes only about 15 minutes to decide a case of that kind. If it should come up here to the Comptroller General—

Senator BINGHAM. Excuse me. I don't think you have got the point, Governor, of what I was trying to bring out. You made a very able argument against its coming to the comptroller. There is no court of claims in Porto Rico?

Governor TOWNER. No.

Senator BINGHAM. In our system of jurisprudence we have a Court of Claims here. If a case was important enough to bring it on appeal to this country, would it not be better that it should come to the Court of Claims rather than to the Comptroller General?

Governor TOWNER. The only thought that I had in my mind was this: Of course, this matter is executive and the position of our present organic law leaves parties the right to go to the courts if they desire, and therefore a case would have its proper legal course if it was of sufficient merit or of sufficient importance to do so. Now, if you have either an appeal to the Comptroller General or an appeal to the Court of Claims, it means interminable and heart-breaking delay; and that is the principal reason to my mind why I think the appeal in this case ought to be confined to the governor general. No person can be injured if he can still have his day in court, and the provision, of course, is made by which the cases may be brought in the court. So, I really do not see any necessity for it as applying to us. It might be different in the Philippines, but not with us.

Senator BROUSSARD. There is now an appeal to the court?

Governor TOWNER. Oh, yes; it is preserved, not in specific language—

Senator BROUSSARD. In the organic law?

Governor TOWNER. Yes. I will quote it:

The decision of the governor in such case shall be final, subject to such right of action as may be otherwise provided by law.

Senator BINGHAM. What are those rights of action that are provided by law?

Governor TOWNER. It would be quite a long story to tell you what those rights are.

Senator BINGHAM. I mean, just in connection with the auditor.

Governor TOWNER. Well, of course, many acts which would violate the provisions of the organic act—for instance, regarding the validity of contracts or matters of that kind—you see, we have a bill of rights here which is more extensive than the Constitution of the United States; and that governs the courts of Porto Rico—any act which otherwise would be constitutional, if it falls within the provisions of the bill of rights in the organic act, is subject to control and to recourse, recompense, modification, and reversal in the courts.

Now, gentlemen, is that all that you desire of me?

The CHAIRMAN. I wanted to make this suggestion, Governor, if it meets with your approval: The committee is not in a position at this time to say what its action will be, whether it may decide to consider this in separate bills or to consider it in one bill. I was about to suggest that if it would be convenient it would be a great help to the committee if you would prepare amendments which you think ought to be made to this bill embodying the ideas which you support.

Governor TOWNER. That would be very easy and very simple, because we just simply ask you to take the amendments which we have suggested here and insert them in lieu of the language that is in that bill there. You will find that wherever you might think it necessary to extend the powers, you will find, I think, that in almost all cases, if not all, that we already have them in our organic act and therefore we do not need any change. The changes that we have suggested, while perhaps they are not fundamental, not vital, we think they will be beneficial. If it is still the judgment of the committee that you should have the part relating to the auditor of Porto Rico contained in the same bill that you have the part relating to the auditor for the Philippines, if you do that, then we ask you to take these provisions that we have here, which will be presented, of course, to you in better form than this, and substitute that language.

The CHAIRMAN. I might suggest that you get that in the form which you desire and that we have it in the record at this point, so that we can have access to it.

Governor TOWNER. It is already in.

The CHAIRMAN. Has any other member any inquiry? Does that complete your statement, Governor?

Governor TOWNER. Yes, it does, with regard to the auditor.

The CHAIRMAN. I think we would like to get through with the discussion of this bill first. Then we will give everybody the full-est latitude in the discussion of other matters.

Senator BUTLER. I understand that the governor prefers a separate bill for Porto Rico.

The CHAIRMAN. That is my understanding of the governor.

Senator BUTLER. Yes. And perhaps the suggestion is that no legislation is necessary, but if the committee desired to provide other legislation, he would like to submit certain amendments to the present law to the committee as a separate proposal for Porto Rico. Now, could you also, in addition to what you have been requested to do, prepare a separate bill or amendment providing for the suggestions which you think might be adapted to the Porto Rican situation?

Governor TOWNER. Well, that is just exactly, Senator, what I was suggesting.

Senator BUTLER. I thought that the inquiry was that you were to incorporate your suggestions in this bill, which applies to both the Philippines and Porto Rico. I would like to have for my own use a separate proposal for Porto Rico.

Governor TOWNER. Oh, yes.

Senator BUTLER. So that we could keep the two things apart.

Governor TOWNER. Let me see, Senator, if I understand you. You mean that you would like to have it drawn up in the form of a bill affecting only the auditor?

Senator BUTLER. Well, affect the subject matter of this bill.

Governor TOWNER. Yes. And not with anything else?

Senator BUTLER. Not with anything else.

Governor TOWNER. Very well. I will see that that is done.

The CHAIRMAN. If it would clarify the situation, you could prepare a bill embodying all the things that you want and we can introduce it and it will aid in the discussion.

Governor TOWNER. I think that Judge Davila introduced such a bill.

Judge FELIX C. DAVILA. Yes. That bill was introduced in the House yesterday. It is H. R. 11610.

Governor TOWNER. Has it been printed yet?

Judge DAVILA. It has not been sent to my office.

The CHAIRMAN. It will be out this afternoon.

Senator BINGHAM. And that bill contains the section with regard to the auditor?

Judge DAVILA. Yes. The other matters, in my opinion, it will be very simple to consolidate them. I believe that we can incorporate them very simply, because now you know what we want.

Governor TOWNER. We will be very glad indeed to present those matters to you. A bill will be introduced in the Senate, will it not?

The CHAIRMAN. Yes. If it will help the matter in any way some of the committee will introduce a bill. I suggest that you bring that matter to Senator Butler's office and if it meets with his approval he can introduce the bill and have it printed and have it before us.

Judge DAVILA. Let me say that I also think that you should eliminate Porto Rico from this bill and consider the Philippine Islands and Porto Rico separately. I believe that is the proper solution.

The CHAIRMAN. The committee will take that matter under advisement. We don't want to take up too many matters now. We want to get through with these hearings.

Does that complete your testimony, Governor?

Governor TOWNER. Yes. I was just going to say in support of this proposition of having the part about the auditor, in so far as it relates to Porto Rico, included with the other amendments to the organic act, that it would probably be in better form if propositions for the amendment of the organic act of Porto Rico could be together and include those regarding the auditor, than that they should be separated. But, of course, that is not essential.

The CHAIRMAN. I suggest that you prepare that and give it to the committee or to Senator Butler, and if it meets with his approval, we can introduce it.

Senator BUTLER. We have some matters now affecting Porto Rico that have been referred to Senator Harris and myself. At the proper time I would like to make some suggestions.

The CHAIRMAN. All right. I think that is a wise determination. I will next call on Mr. Barcelo.

**STATEMENT OF ANTONIO R. BARCELO, PRESIDENT OF THE
SENATE, PORTO RICO**

(The statement of Mr. Barcelo was delivered in Spanish and was translated by Mr. Miguel Guerra-Mondragon.)

Mr. BARCELO. Mr. Chairman and gentlemen of the committee, the delegation from the Legislative Assembly of Porto Rico has come here before this committee to ask by order of the said legislature the introduction of several amendments to our organic act, with the main object in view that our island will enjoy greater powers in the exercise of self-government.

We appeared during the last session of Congress with the same purposes in view. We were able to obtain that bills were introduced in both Houses of Congress granting us, among other reforms, the right to elect our own governor. The said bill, the elective-governor bill, was passed by the Senate by a unanimous vote, with several amendments, among which was one determining the date of the said election as the year 1932. But the bill was not approved by the House in spite of the fact that it had been reported upon favorably by the Committee on Insular Affairs, because it was detained by the strict rules governing matters at the last days of the session.

So, we are again insisting upon that measure, which to us is fundamental and just. I shall not detain your attention very long, and therefore I shall not repeat the lengthy arguments and reasons that were presented before this same committee before and before the Committee on Insular Affairs of the House, since those statements are of record and that is the best reference that can be made for your consideration at this time.

But we will say, however, that this bill is the object of the greatest anxiety on the part of our people, who feel anxious to be treated with the justice that they deserve and in order that we may be better able to fill our own responsibilities.

Our people have demonstrated that they have a high, progressive spirit. They have also shown that they can make good use of liberty in all lines of endeavor. What has been accomplished by our people in the matters of sanitation, health, public works, and everything of that nature, political economy, and social life represent the highest achievement that could be realized by any people in the world. The annual report of our governor, Horace M. Towner, expresses with data and statistics the truth of our statements; and our progress can be seen by everyone who visits Porto Rico and is able to compare Porto Rico as it is now with what it was 10 years ago. We have lots of things to do yet. We need to solve some serious difficulties of an economic order.

Our legislature recently approved a resolution whereby, besides insisting on our petition for complete self-government, we demand other amendments of the organic act tending to solve some of these difficulties in some manner. I beg to deliver now a copy of such resolution and ask you gentlemen that the same be included as part of this record.

The CHAIRMAN. That order will be made.

(The resolution referred to is as follows:)

CONCURRENT RESOLUTION To request the Congress of the United States to amend, reenact, and add certain sections to the organic act of Porto Rico

Be it resolved by the House of Representatives of Porto Rico (the Senate of Porto Rico concurring): That the Legislature of Porto Rico, in the performance of its duty and exercising the right of, the people it represents; according to the principles of liberty and democracy informing the traditions and life of the American people, and inspired by pure sentiments of human dignity, requests the Congress of the United States to amend and re-enact the following sections of the organic act of Porto Rico, entitled "An act to provide a civil government for Porto Rico, and for other purposes," approved March 2, 1917.

SECTION 1. That section 3 of the organic act of Porto Rico is hereby amended to read as follows:

SEC. 3. That no export duties shall be levied or collected on exports from Porto Rico, but taxes and assessments on property, incomes, internal revenue and license fees, and royalties for franchises, privileges and concessions may be imposed for the purposes of the Insular and municipal governments, respectively, as may be provided and defined by the Legislature of Porto Rico; which is also empowered to direct the custom and post officers of the United States in Porto Rico, to collect in the island and to cover into the insular treasury the internal-revenue taxes imposed by authority of the Legislature of Porto Rico on imports from the United States and foreign countries, when a similar and uniform tax is also levied on like articles produced or producible in Porto Rico. With the approval of the President of the United States the Legislature of Porto Rico is also hereby empowered—

"(a) To impose import or customs duties on imports from the United States or foreign countries when similar articles are produced in Porto Rico and are not produced in the United States, for the purpose of preventing reexportation of such articles as products of the soil of Porto Rico;

"(b) To levy a tax additional to the United States customs duty on all articles of any class imported from foreign countries;

"(c) To reduce the tax levied on articles of foreign origin when such articles are raw food products and it is shown that such measure is necessary to reduce the people's cost of living or subsistence: *Provided*, That articles on which the customs tariff is reduced on importation into Porto Rico, shall pay, if reexported to the United States, an export duty equal to such part of the United States tariff duty as they failed to pay upon their introduction into Porto Rico;

"(d) To grant foreign states all or any of the tariff rebates authorized in the foregoing paragraphs, in consideration of the grant by said states of tariff rebates on articles produced in Porto Rico, the necessary negotiations to be carried on through the office of the Secretary of State of the United States.

"When necessary to anticipate taxes and revenues, bonds and other obligations may be issued by Porto Rico or any municipal government therein as may be provided and defined by the Legislature of Porto Rico; and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by Porto Rico or any municipal government therein as may be provided by law, and to protect the public credit: *Provided, however*, That no public indebtedness of Porto Rico or of any subdivision or municipality thereof shall be authorized or allowed in excess of ten (10) per centum of the aggregate tax valuation of its property, and all bonds issued by the government of Porto Rico, or by its authority, shall be exempt from taxation by the Government of the United States, or by the government of Porto Rico or of any political or municipal subdivision thereof, or by any State, or by any county, municipality, or other municipal subdivision of any State or Territory of the United States, or by the District of Columbia. In computing the indebtedness of the people of Porto Rico bonds issued by the people of Porto Rico secured by an equivalent amount of bonds of municipal corporations or school boards of Porto Rico shall not be counted nor bonds issued for irrigation purposes by the different municipalities or the people of Porto Rico when such bonds are redeemable with the proceeds of a special tax levied on the landowners benefited by the irrigation system to which such loans are to be applied."

SEC. 2. That a new section is hereby inserted between sections 5 and 6 of the said organic act to read as follows:

"SEC. 5a. That the citizens of the United States referred to in section 5 of 'An act to provide a civil government for Porto Rico and for other purposes,' approved March 2, 1917, and other citizens of the United States permanently domiciled in the island for more than three years, shall also be citizens of Porto Rico: *Provided*, That the persons born in Porto Rico of alien parents, referred to in the last paragraph of the said section, who did not avail themselves of the privilege granted to them of becoming citizens of the United States, shall have the period of one year from the approval of this act to make the declaration provided for in the aforesaid section: *And provided further*, That the person who elected to retain the political status of citizens of Porto Rico may become citizens of the United States in the same term and manner as provided for the naturalization of native Porto Ricans born of foreign parents."

SEC. 3. That section 12 of an act entitled "An act to provide a civil government for Porto Rico, and for other purposes," approved March, 2, 1917, be, and the same is hereby, amended to read as follows:

"SEC. 12. That the supreme executive power shall be vested in an executive officer, whose official title shall be the governor of Porto Rico. He shall be appointed by the President, by and with the advice and consent of the Senate, and hold his office at the pleasure of the President and until his successor is chosen and qualified. He shall have general supervision and control of all the departments and bureaus of the government in Porto Rico, so far as is not inconsistent with the provisions of this act, and shall be commander in chief of the militia. He may grant pardons and reprieves and remit fines for offenses against the laws of Porto Rico, and respites for all offenses against the laws of the United States until the decision of the President can be ascertained, and may veto any legislation enacted as hereinafter provided. He shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of Porto Rico and of the United States applicable in Porto Rico, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the island, summon the posse comitatus, or call on the militia, to prevent or suppress lawless violence, invasion, insurrection, or rebellion, and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the island or any part thereof, under martial law until communication can be had with the President and the President's decision therein made known. He shall annually, and at such other times as he may be required, make official report of the transactions of the government of Porto Rico to the executive department of the Government of the United States to be designated by the President as herein provided, and his said annual report shall be transmitted to Congress, and he shall perform such additional duties and functions as may, in pursuance of law, be delegated to him by the President.

"At the general election to be held in Porto Rico in the year 1923, and thereafter at each general election the qualified electors of Porto Rico shall elect the governor, who shall qualify as such on the first Monday of January of the succeeding year, and upon such qualification, the office of the appointed governor shall cease and determine. A lieutenant governor shall also, at such time, be elected for a term of four years, under like conditions. He shall act as governor in case of a vacancy, the temporary absence or removal, resignation, or disability of the governor, and shall exercise all the powers and perform all the duties of the governor, during such vacancy, disability, or absence. The lieutenant governor shall be the ex officio president of the senate and shall receive such salary as the Legislature of Porto Rico may determine. The governor and the lieutenant governor thus elected shall hold their offices for a term of four years and until their successors have been elected and shall have qualified.

"The elected governor herein provided for may be impeached by the insular house of representatives, and on trial by the insular senate may be removed by a two-thirds vote of that body for any impeachment cause. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit in Porto Rico, but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law."

SEC. 4. That section 13 of the organic act, approved March 2, 1917, be, and the same is hereby, amended to read as follows:

"SEC. 13. That the following executive departments are hereby created: A department of justice, the head of which shall be designated as the attorney general; a department of finance, the head of which shall be designated as the treasurer; a department of the interior, the head of which shall be designated as the commissioner of the interior; a department of education, the head of which shall be designated as the commissioner of education; a department of agriculture and commerce, the head of which shall be designated as the commissioner of agriculture and commerce; a department of labor, the head of which shall be designated as the commissioner of labor; and a department of health, the head of which shall be designated as the commissioner of health.

"The heads of departments shall be appointed by the governor, by and with the advice and consent of the Senate of Porto Rico, for the term of four years, and until their successors are appointed and qualified, unless sooner removed by the governor.

"Heads of departments shall reside in Porto Rico during their official incumbency.

"The heads of departments shall collectively form a council to the governor, known as the executive council. They shall perform under the general supervision of the governor the duties hereinafter prescribed or which may hereafter be prescribed by law and such other duties not inconsistent with law as the governor, with the approval of the President, may assign to them; and they shall make annual and such other reports to the governor as he may require, which shall be transmitted to the executive department of the Government of the United States to be designated by the President as herein provided: *Provided*, That the duties herein imposed upon the heads of departments shall not carry with them additional compensation."

SEC. 5. That section 18 of the said organic act, approved March 2, 1917, be, and the same is hereby, amended to read as follows:

"SEC. 18. That the commissioner of agriculture and commerce shall have general charge of such bureaus and branches of the government as have been or shall be legally constituted for the study, advancement, and benefit of agriculture, commerce and the industries; the chief purpose of this department being to foster, promote, and develop the agricultural, commercial and industrial interests and the welfare of the farmers of Porto Rico; to improve their market conditions and to advance their opportunities for profitable sales of their products, and shall perform such other duties as may be prescribed by law."

SEC. 6. That between sections 18 and 19 of said organic act, approved March 2, 1917, a new section is hereby inserted to read as follows:

"SEC. 18a. That the commissioner of labor shall have charge of such bureaus and branches of the Government as have been or shall be legally constituted to foster and promote the welfare of the wage earners of Porto Rico; to improve their working conditions and to advance their opportunities for profitable employment, and shall perform such other duties as may be prescribed by law."

SEC. 7. That section 31 of the organic act of Porto Rico, approved March 2, 1917, be, and the same is hereby, amended to read as follows:

"SEC. 31. That members of the Senate and House of Representatives of Porto Rico shall receive compensation at the rate of twenty (20) dollars a day for the first sixty days of each regular session and one (1) dollar a day for each additional day of such session while in session, and mileage for each session at the rate of ten (10) cents a kilometer for each kilometer actually and necessarily traveled in going from their legislative districts to the capital and therefrom to their place of residence in their districts by the usual routes of travel."

SEC. 8. That section 33 of the organic act of Porto Rico, approved March 2, 1917, be, and the same is hereby, amended to read as follows:

"SEC. 33. That regular sessions of the legislature shall be held annually, convening on the second Monday in February of each year, unless otherwise provided by the legislature. The governor may call special sessions of the legislature or of the senate at any time when in his opinion the public interests may require it, but no special sessions shall continue longer than ten days, not including Sundays and holidays, and no legislation shall be considered at such session other than that specified in the call."

SEC. 9. That the first paragraph of section 34 of the organic act of Porto Rico, approved March 2, 1917, be, and the same is hereby, amended to read as follows:

"SEC. 34. That the enacting clause of the laws shall be, as to acts, 'Be it enacted by the Legislature of Porto Rico,' and as to joint resolutions, 'Be it resolved by the Legislature of Porto Rico.' Except as hereinafter provided, bills and joint resolutions may originate in either house. The governor shall submit at the opening of each regular session of the legislature a budget of receipts and expenditures, which shall be the basis of the ensuing biennial appropriation bill. No bill shall become a law until it be passed in each house by a majority yea-and-nay vote of all of the members belonging to such house and entered upon the journal and be approved by the governor within ten days thereafter. If when a bill that has been passed is presented to the governor for his signature he approves the same, he shall sign it; or if not, he shall return it, with his objections, to the house in which it originated, which house shall enter his objections at large on its journal and proceed to reconsider it. If after such reconsideration, two-third of all the members of that house shall agree to pass the same it shall be sent, together with the objections of the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members of that house, it shall become law the same as if it had been approved by the governor. The vote of each house shall be by yeas and nays, and the names of the members voting for and against shall be entered on the journal."

SEC. 10. That the first paragraph of section 38 of the organic act of Porto Rico, approved March 2, 1917, be, and the same is hereby, amended to read as follows:

"SEC. 38. That all grants of franchises, rights, and privileges of a public nature shall be made by a public service commission, consisting of a public service commissioner appointed by the governor, with the advice and consent of the senate, for a term of four years and until his successor shall be appointed and shall have qualified, and two commissioners elected at each general election for the term of four years and until their successors are elected and shall have qualified, whose terms shall begin the second day of January following their election. In the election of the said commissioner each elector shall be allowed to vote but for one candidate. The salary of the commissioner who presides over the commission shall be six thousand (6,000) dollars a year, and the compensation of each member elective shall be ten (10) dollars for each day's attendance at the sessions of the commission; but in no case shall they receive more than one thousand (1,000) dollars during any one year. The said commission is also empowered and directed to discharge all the executive functions relating to public-service corporations heretofore conferred by law upon the executive council and such functions as may be conferred thereon by the legislature. Franchises, rights and privileges granted by the said commission shall not be effective until approved by the governor; and shall be reported to Congress, which hereby reserves the power to annul or modify the same."

SEC. 11. That the following section shall be inserted between sections 39 and 40 as a part of the organic act of Porto Rico, approved March 2, 1917, to read as follows:

"SEC. 39a. That the Legislature of Porto Rico is hereby empowered to enforce the provisions of the joint resolution approved May first, nineteen hundred, with respect to the buying, selling or holding of real estate, and is also empowered to raise the limit of the five hundred acres provided for in the said joint resolution, up to a limit of two thousand acres; and to impose additional and progressive taxes on all property owned or controlled in excess of five hundred acres by corporations, partnerships, associations and individuals and to provide for the forfeiture of all lands owned or controlled by corporations in violation of the prohibition established in the aforesaid joint resolution or of any other law on the subject enacted by the Legislature of Porto Rico by virtue of the authorization hereby conferred on it, after giving a term of no less than one year to the owners for the disposal of their property so owned and controlled: *Provided*, That the legislature shall have power to levy progressive taxes on the property and income of nonresidents, in excess of the taxes levied on the property and income of residents."

SEC. 12. That section 41 of the organic act of Porto Rico, approved March 2, 1917, be, and the same is hereby, amended, to read as follows:

"SEC. 41. That Porto Rico shall constitute a judicial district to be called 'the district of Porto Rico.' The President, with the advice and consent of the Senate, shall appoint one district judge, who shall serve for a term of four years and until his successor is appointed and has qualified. The salary of said judge shall be seventy-five hundred (7,500) dollars per annum. A district attorney shall likewise be appointed whose salary shall be four thousand (4,000) dollars a year, and a marshal for said district, whose salary shall be three thousand five hundred (3,500) dollars per annum, each for a term of four years unless sooner removed by the President. The district court for said district shall be called 'the District Court of the United States for Porto Rico,' and shall have power to appoint all necessary officials and assistants, including the clerk, interpreter and such commissioners as may be necessary, who shall be entitled to the same fees and have like powers and duties as are exercised and performed by United States commissioners. Such district court shall have jurisdiction of all cases cognizable in the district courts of the United States, and shall proceed in the same manner. In addition, said district court shall have jurisdiction for the naturalization of aliens and Porto Ricans, and for this purpose residence in Porto Rico shall be counted in the same manner as residence elsewhere in the United States. Said district court shall have jurisdiction of all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign state or states, or citizens of a State, Territory, or district of the United States, not domiciled in Porto Rico, wherein the matter in dispute exceeds, exclusive of interest or cost, the sum or value of five thousand (5,000) dollars, and of all controversies in which there is a separable controversy involving such jurisdictional amount and in which all of the parties on either side of such separable controversy are citizens or subjects of the character aforesaid: *Provided*, That nothing in this act shall be deemed to impair the jurisdiction of the District Court of the United States for Porto Rico to hear and determine all controversies pending in said court at the date of the approval of this act. Upon the taking effect of this act the salaries of the judge and officials of the District Court of the United States for Porto Rico, together with the court expenses, shall be paid from the United States revenues in the same manner as in other United States district courts. In case of vacancy or of the death, absence or other legal disability on the part of the judge of the said District Court of the United States for Porto Rico, the President of the United States is authorized to designate one of the judges of the Supreme Court of Porto Rico to discharge the duties of judge of said court until such absence or disability shall be removed, and thereupon such judge so designated for said service shall be fully authorized and empowered to perform the duties of said office during such absence or disability of such regular judge, and to sign all necessary papers and records as the acting judge of the said court, without extra compensation. No interlocutory or preliminary injunction suspending or restraining the enforcement or execution of any law or statute of Porto Rico by restraining the action of any officer of said island in the enforcement or execution of such statute, or in putting it into effect or in executing an order made by any administrative board or commission acting under and pursuant to any statute of said island, shall be issued or granted by the judge of the United States District Court for Porto Rico upon the ground of the unconstitutionality of said law or statute, unless the application for such injunction shall be presented to said United States district judge and said application shall be heard by said Federal judge and by two judges of the Supreme Court of Porto Rico and shall not be granted unless a majority of said three judges concur in granting such application. Whenever such application as aforesaid is presented to said Federal judge he shall immediately call to his assistance to hear and determine the application the aforesaid two judges of the Supreme Court of Porto Rico. Said application shall not be heard before at least five days' notice of Porto Rico and to such other persons as may be defendants in the suit. The hearing upon such applications for interlocutory injunctions shall be given precedence on the calendar of said Federal court and shall be assigned for hearing at the earliest practicable day after the expiration of the five days' notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from any order granting or denying an interlocutory injunction in such cases. No permanent injunction shall be granted unless concurred in by a majority of the aforesaid three judges:

Provided, That if before the final hearing of such application a suit shall have been brought in the insular ports of Porto Rico to enforce such statute or order all proceedings or suits in the Federal court of Porto Rico questioning such statutes where an order has been issued to stay the execution of such statute or order, shall be stayed pending the final determination of such suit in the insular courts; but such stay shall be vacated upon proof made after due hearing and service of notice on the attorney general of Porto Rico that the suit in the insular courts is not being prosecuted with diligence and good faith."

SEC. 13. That section 42 of the organic act of Porto Rico, approved March 2, 1917, be, and the same is hereby, amended to read as follows:

"Sec. 42. That the laws of the United States relating to appeals, writs of error and certiorari, removal of causes, and other matters or proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the District Court of the United States and the courts of Porto Rico. Regular terms of said United States District Court shall be held at San Juan, commencing on the first Monday in May and November of each year. Also at Ponce on the second Monday in February of each year, and annually at Mayaguez at such stated time as said judge may deem expedient. All pleadings and proceedings in said court shall be conducted in the English or Spanish language. The said district court shall be attached to and included in the first circuit of the United States, with the right of appeal and review by said circuit court of appeals in all cases where the same would lie from any district court to a circuit court of appeals of the United States, and with the right of appeal and review directly by the Supreme Court of the United States in all cases where a direct appeal would be from such district courts."

SEC. 14. Section 49 of the organic act of Porto Rico, approved March 2, 1917, is hereby amended to read as follows:

"SEC. 49. Hereafter, and until the Legislature of Porto Rico otherwise provides, the judges, marshals, and secretaries of the courts at present established, or of such courts as may be established in future, shall be appointed by the governor with the advice and consent of the Senate of Porto Rico."

SEC. 15. That a commission from the Legislature of Porto Rico, appointed by the president of the Senate and the speaker of the house of representatives, shall proceed to Washington as soon as it may deem advisable after the convening of the coming session of Congress, to continue the work left pending by the commission sent to Washington under resolution of the last legislature; and said commission shall have ample powers, which are hereby granted to it, to demand a most complete and absolute self-government permitting our island to develop its economic and social progress to the point of placing itself in condition some day to propound the problem of its final status through a plebiscite of our people to express their sovereign will.

SEC. 16. That a copy of this resolution be transmitted to the President of the United States, the President of the Senate, the Speaker of the House of Representatives, the chairman of the Senate Committee on Territories and Possessions, the chairman of the House Committee on Insular Affairs, and the Resident Commissioner for Porto Rico in Washington.

Mr. BARCELO. The speaker of our house, Mr. José Tous Soto; the vice president of the house, who is also chairman of the ways and means committee, Mr. Miguel Guerra-Mondragon, Senator Gonzales Mena, and Representative Mendez are ready and prepared to answer any question that you might desire to ask with reference to any problem that affects our petition. Also there is with us Senator Iglesias, who is ready also to cooperate with us.

We know that in the Senate, besides the elective-governor bill, another bill has been introduced referring to the powers of the auditor of Porto Rico, which is the bill now under consideration. We believe that this auditor bill is unnecessary. The auditor of Porto Rico has practically to-day in our island the same powers to which this new bill refers; but our delegation believes that it is better to suggest the convenience of including some of these provisions affecting the powers of the auditor in the new bill that has

already been introduced in the House by our Resident Commissioner, of which Governor Towner has given you a copy.

This bill contains other amendments than the ones I have referred to before. These amendments, I expect, will merit your careful and favorable consideration. All these amendments have been drafted after careful consideration on the part of the delegation and on the part of our Resident Commissioner and on the part of our governor, Hon. Horace M. Towner, who shares with us in these labors, indicating his responsiveness to the high, lofty principles which have made him an object of our affection and of our highest consideration.

Governor Towner has been identified with our problems such as the most competent authority among our men could have been or ever could be. The action of Governor Towner in supporting our demands, taking into consideration his high spirit of justice and his deep knowledge of our insular problems, is the best guaranty that we can present to you in support of our cause.

Do not vacillate in extending this justice to us. Do not delay longer your action. Porto Rico anxiously awaits to obtain the reforms that they ask now, and this delegation in behalf of our people assures you that the gratitude of our island shall be eternal.

That the loyalty of our people and their patriotism is the same as that of good American citizens can not be doubted, since you know the high proofs that we have furnished at the right moment when it was necessary—our blood and lives in defense of the Nation.

The CHAIRMAN. Are there any questions from members of the committee?

All right, Senator; we thank you.

We shall next hear from Speaker José Soto.

STATEMENT OF JOSÉ TOUS SOTO, SPEAKER OF THE HOUSE OF REPRESENTATIVES, PORTO RICO

Mr. SOTO. Gentlemen of the committee, if I understand well what the gentleman stated, we are not going to discuss now any other thing but the bill in regard to the auditor.

The CHAIRMAN. I did not mean to make it quite that restrictive. Of course, since we have this bill before us, we should like especially to get your views on this bill; but we did not mean to restrict you. Therefore, if you want to express your views on any other matters, go ahead.

Mr. SOTO. In regard to the bill about the powers of the auditor of Porto Rico, Governor Towner has covered the whole question, so I will say very little about that matter.

I agree with the Resident Commissioner of Porto Rico that the question with regard to the auditor in Porto Rico should be stricken from the bill under consideration. It seems to me that legislation with regard to the Philippine Islands and with regard to Porto Rico should be treated separately. This has been the policy of the committee of both Houses up to this time. The Philippines have their own organic act; Porto Rico has also its own organic act. The policy of Congress with regard to the Philippine Islands is different to that for Porto Rico. The Philippines have been promised independence. We are American citizens. Our organic act is different in some respects to the organic act of the

Philippines. So, it seems to me that those questions should not be involved in the same act, in the same bill.

On the other hand, I agree with Governor Towner—and that is the opinion of the legislative commission now appearing before this committee—that it is not necessary to legislate about the powers and functions of the auditor of Porto Rico. Perhaps it may be necessary to legislate in regard to the Philippines. That is not a question for us. But the powers of the auditor in Porto Rico are clearly stated in our law; and it seems to me that the law as it is at the present time is enough for our purposes. But, of course, if it is the opinion of the committee that the salary of the auditor should be raised, I do not see any objection to that.

The CHAIRMAN. You say you do not see any objection.

Mr. SOTO. No. I don't see any objection.

The CHAIRMAN. You don't agree with Governor Towner?

Mr. SOTO. Yes. I agree with the governor, because the salary of the auditor is \$5,000, so I agree that the salary should be raised to \$6,000 in order to equal the salary of the several heads of the departments.

The CHAIRMAN. Let us see if we understand you. The heads of the departments now get how much?

Mr. SOTO. \$6,000.

The CHAIRMAN. How much does the auditor get?

Mr. SOTO. The auditor gets \$5,000.

The CHAIRMAN. You would be in the favor of raising the auditor's salary to that same amount?

Mr. SOTO. Yes, the same as the heads of the departments.

Senator BROUSSARD. Does not the auditor get a residence furnished?

Mr. SOTO. Yes. He has a residence, but the attorney general has one also.

Senator BUTLER. I think the salary of the auditor was raised in the last session of Congress to \$6,000.

Mr. SOTO. I don't remember that. I supposed that his salary was \$5,000.

Governor TOWNER. It was amended last year.

The CHAIRMAN. That was my recollection, that it was raised.

Mr. SOTO. Of course, if his salary has been raised, the auditor now gets \$6,000.

The CHAIRMAN. Then you would agree with Governor Towner?

Mr. SOTO. I agree with the governor that the auditor is not entitled to have more salary than the several heads of departments.

The CHAIRMAN. All right.

Mr. SOTO. Now, in regard to appeals to the Comptroller General: It seems to me that that is not wise, because that will entail expenses for the heads of the several departments or private persons who want to appeal from the decisions of the auditor. I think at the present time an appeal can be taken from the auditor to the governor. Then, article 21 of the organic act provides that the decision of the governor will be final, but subject to any right of action provided by law. It seems to me that the organic act refers to the laws of the Legislature of Porto Rico, so we may provide ample

remedy in the courts for appealing from the decisions of the governor.

Of course, I agree also with the governor that if the committee wants to put these matters that the governor has mentioned in a separate bill, it will be wise to provide in regard to the keeping of records and accounts in the office of the auditor, and also to give the power to the auditor, which is not clear now in the law, to compel not only the obedience of witnesses in appearing before him, but also to compel the production of records, papers, and books. It seems to me that those should be the only amendments that should be made in regard to the auditor.

Now, there are several matters that the Commission of Porto Rico wants to present for the consideration of this committee. I will touch lightly on all those matters, because Mr. Guerra-Mondragon, who will follow me, will treat these matters with more attention. Those suggestions have been embodied in a bill introduced in the House by Mr. Davila.

You gentlemen have a copy of this bill now which refers to the organization of the public-service commission. That is an important measure. At the present time the public-service commission is composed of two members elected by the people and of the several heads of departments besides the auditor, so it is a very large commission. It is impossible to transact business in a proper and efficient way. The heads of departments are very busy with the matters belonging to their departments, and for that reason it seems to me that it is wise to have a commission composed of three members, one commissioner and two associate members, the commissioner to be appointed by the Governor of Porto Rico, with the advice and consent of the senate, with a salary of \$6,000, the same as the several heads of departments; and the two associate commissioners without a fixed salary, to have a per diem, as it is now in the law, but instead of \$6 a day, to have \$10 a day. That is the change that we suggest in regard to the public-service commission in order to make it more efficient.

I have some other suggestions to make in the bill introduced by Mr. Davila. The most important matter, in the opinion of our commission, is in regard to the collection of internal revenues imposed by the Legislature of Porto Rico. Our organic act provides that the internal revenue law of the United States does not apply to Porto Rico, so we have our own internal revenue laws. We have always had a law in regard to this matter. That law was enacted in the year 1925. But in the enforcing of that power it is difficult for us to reach the goods, wares, and merchandise subject to the tax, that goes to Porto Rico from foreign countries and from the United States. According to a decision of the court we must wait until this merchandise or goods is placed for sale in the several stores in order that the taxes attached to those goods and merchandise can be collected.

Of course, that has a double effect. In the first place it makes it impossible for the treasurer of Porto Rico to collect taxes sometimes on these merchandise and goods that come to Porto Rico from foreign countries and from the United States, so that they are practically exempt from taxation. In the second place the effect is that

there is an unfair competition with the houses that must pay taxes on their merchandise.

All the merchandise that comes to Porto Rico through the mail or by express is not subject to taxation. They are subject to taxation by law, but it is impossible to impose the tax because the law says that the tax will attach to those goods, merchandise, and wares which are subject to the tax imposed by authority of our legislative assembly, as soon as those goods are manufactured and introduced into Porto Rico.

I think I have explained clearly that matter to the committee, but anyhow Mr. Guerra will further explain that matter and show you that it is very important from the point of view of our revenues.

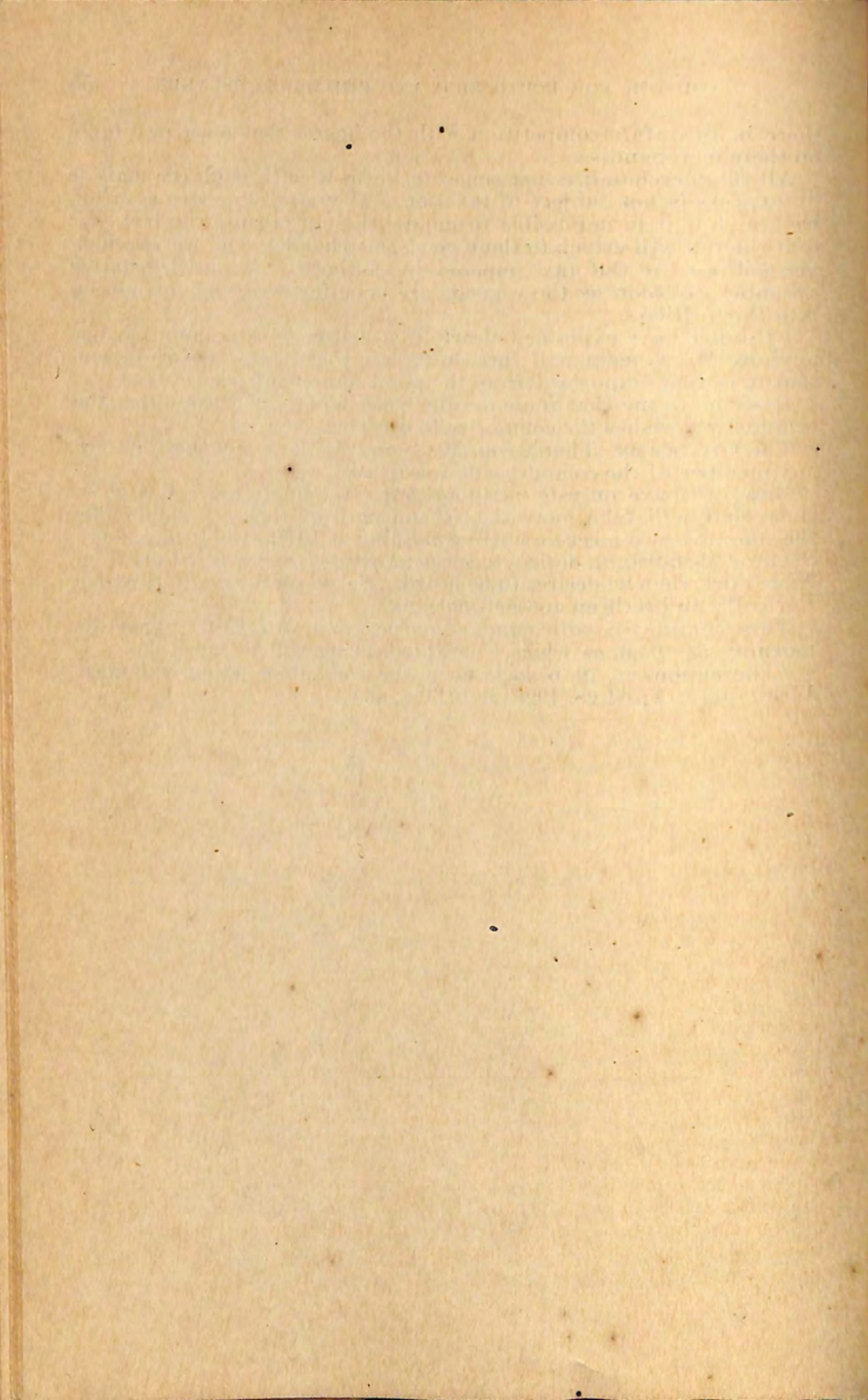
It seems to me that these are the most important matters that the commission wishes the committee to consider.

The CHAIRMAN. Thank you, Mr. Soto. Is there any question that any member of the committee desires to ask?

Now, we have only five minutes left. I want to ask a few questions that will take more than that length of time. I should like the committee to meet to-morrow morning at 10.30, if it is convenient. Senator Mondragon desires to speak; Mr. Iglesias has wired me from New York that he desires to be heard. So we shall have to give our Porto Rican brethren another morning.

This committee will stand adjourned and will meet to-morrow morning at 10.30, at which time this hearing will be finished.

(Thereupon at 12 o'clock noon the committee adjourned until Wednesday, April 28, 1926, at 10.30 a. m.)



AUDITOR FOR PORTO RICO AND THE PHILIPPINE ISLANDS

WEDNESDAY, APRIL 28, 1926

UNITED STATES SENATE,
COMMITTEE ON TERRITORIES AND INSULAR POSSESSIONS,
Washington, D. C.

The committee met, pursuant to adjournment, at 10.30 o'clock a. m., in the committee room, Capitol, Senator Frank B. Willis, presiding.

Present Senators Willis (chairman), Bayard, Harris, and Nye; later also Senator Butler.

The CHAIRMAN. The committee will be in order. We will continue our hearing this morning by calling first upon Governor Towner. He did not quite finish his statement and I understand that he has some other observations that he desires to make.

STATEMENT OF HON. HORACE M. TOWER—Resumed

Governor TOWNER. Continuing the statement that I made the other day, I again call attention to the fact that if there are any amendments to be made to the provisions of the organic act with regard to the auditor, we would prefer to have those which have been suggested by the representatives of Porto Rico.

I am quite sure that you will find that they increase the power of the auditor to at least the same degree that you have increased the power of the auditor of the Philippines, having due regard to our different conditions; and I think it would be unwise for the committee to adopt the suggestion for amending the organic law of the Philippines and make that applicable to Porto Rico rather than the amendments which have been suggested to our own organic act, which is inharmonious with the organic act of the Philippines.

The CHAIRMAN. I think I didn't get what you said the last thing. What was the argument about the Philippines?

Governor TOWNER. It is like this: The provisions with regard to the organic act of the Philippines are intended to amend the organic act of the Philippines. Now, to take those provisions and apply them to the organic act of Porto Rico is not harmonious to the Porto Rican organic act; and therefore it would be wiser and in harmony with our situation if the amendments were adopted that we suggest, which would increase the powers of the auditor but do it in accordance with our own needs and necessities, rather than to take that which was intended primarily to affect and enlarge and increase the powers of the auditor of the Philippine Islands.

Senator BAYARD. May I ask a question?

Governor TOWNER. Yes.

Senator BAYARD. Have you suggested amendments with this proposed change in the Porto Rican act?

Governor TOWNER. Yes.

Senator BAYARD. I just wanted to know whether you had.

Governor TOWNER. Yes. You will see it if you look at this bill which was introduced.

Senator BAYARD. Don't bother to refer to them. You say you have suggested them?

Governor TOWNER. Yes.

Senator BAYARD. I will get them all right.

Governor TOWNER. You will find them, Mr. Senator, in this bill which has been already introduced in the House of Representatives and which will be introduced here, which amends section 20 of the organic act, which applies particularly to the auditor of Porto Rico.

Now, gentlemen, in this bill—which is the House bill at the present time, but which will be introduced in the Senate—the matters referred to in this bill will be discussed by Mr. Guerra and of course I will be here to be heard if the committee desires to ask any questions about it. These provisions, I think, you will find entirely reasonable and entirely in consonance with the progressive development of Porto Rico.

I think I can say to you gentlemen that Porto Rico is making progress and making what might almost be called rapid progress. I do not know whether you desire any discussion; in fact, I would not try to take up your time in telling you about our financial difficulties, which arose not because of any fault on the part of the legislature because they fell short more than a million of meeting the required budget, but which arose because of the fact that the taxpayers really united to resist the payment of taxes and took the matter to the courts. Now the courts have decided those propositions favorably to Porto Rico, as they all were legally enacted and reasonable in their application.

The CHAIRMAN. Would you suffer an interruption at this point?

Governor TOWNER. Yes.

The CHAIRMAN. I don't care to have you go into a detailed statement of this matter, but I wondered if you would not care to make a very brief statement with reference to certain newspaper articles that have appeared in this country and have been quite generally circulated. Those articles appeared in the first instance in the "Baltimore Sun." I read all those articles and I read the reply to them from one of your Porto Rican newspapers. I should be glad to have a very brief statement from you as to the situation described in those articles.

Governor TOWNER. I think perhaps I might answer that in a very general way by saying that it is rather singular that a single reporter from a single newspaper in the United States should find conditions which he says he was told exist, because he was only there for a couple of weeks and all of his information, he says, was told to him. It is unfortunate that nearly every statement that he made was unfounded and was just the result of rumor and gossip of those who were attacking the administration.

The fact is that the government of Porto Rico is doing well. We would be fully justified in claiming that it is as clean and pro-

gressive a government as there is anywhere in the United States. That may seem almost a strong statement, but I do not care what sort of test you choose to make with regard to it. I think we would be justified in asking for a comparison with almost any State in the Union that you might choose. We have a government there that is a credit to Porto Rico and a credit to the United States. I do not believe that anywhere you will find any dependency or any colonial possession anywhere on the earth of any nation that can compare with Porto Rico in the progressive development that it has made under the American occupation.

Now, with regard to the financial status: Just as soon as these matters of controversy with regard to the legality of these tax rates was settled this opposition fell to the ground. Now we are not only meeting all the budgetary expenses, but we are accumulating a large surplus.

I want to call your attention to a statement that I just received in a letter dated April 18, and also submit one dated April 25. It states that at the close of March the available cash balance in the insular revenue for budgetary expenses amounted to \$111,197.64. We have paid all expenses up to date and our balances to-day show an available cash balance of insular revenues amounting to—as shown in this statement dated April 21—\$700,374.39. We have a balance of trust funds, and other deposits in the treasury and in the various banks in cash, according to the statement made here, amounting in the aggregate to \$10,400,868.20. This statement made charging the island with being a bankrupt concern, of course, is laughable when you come to consider the real facts.

The CHAIRMAN. Do you want this statement to go into the record?

Governor TOWNER. Yes, certainly, if you desire. It is the report of the treasurer.

The CHAIRMAN. Let me make a brief inquiry about it.

Governor TOWNER. Yes.

The CHAIRMAN. What are these funds? Some of them are rather large. It says American Colonial Bank three millions and something, and the National City Bank two million and something.

Governor TOWNER. We never make, Mr. Chairman, any loan without providing for an amortization feature, and accumulating from time to time the money necessary to pay the loan. The most of that balance that is in the treasury, there is what might be called trust funds.

The CHAIRMAN. Sinking funds?

Governor TOWNER. Sinking funds for the payment and amortization of the debts. Those deposits are kept intact and they are accumulating more rapidly than was anticipated. We have never defaulted in the payment of the interest or the principal when due on any obligation that the Government has made. We have a surplus in almost every fund so that whenever we can buy a bond before it is due—we have word left with our New York representative bankers that whenever a bond of Porto Rico is offered before it is due at a price that would be at all advantageous to us financially, we would be very glad indeed to take it up. And we are taking them up in advance of their maturity whenever the opportunity occurs.

The CHAIRMAN. Did I understand you to say that there was a cash balance of some seven hundred thousand?

Governor TOWNER. Yes. You see, that statement is made there. (The statement referred to is as follows:)

Balances in depositaries at the close of business April 21, 1926

American Colonial Bank, San Juan, P. R.	\$3, 695, 370. 83
Banco Commercial de Puerto Rico, San Juan, P. R.	600, 000. 00
Banco Territorial y Agrícola, San Juan, P. R.	750, 000. 00
Credito y Ahorro Ponceño, Ponce, P. R.	520, 000. 00
Mechanic and Metals National Bank, New York, N. Y.	443, 323. 61
Royal Bank of Canada, San Juan, P. R.	150, 000. 00
Municipal bonds	655, 000. 00
School-board bonds	36, 000. 00
The National City Bank, San Juan, P. R.	2, 427, 173. 76
Banco de Ponce, Ponce, P. R.	500, 000. 00
Banco Popular de Economías y Prestamos, San Juan, P. R.	30, 000. 00
Banco Masonico de Puerto Rico, San Juan, P. R.	75, 000. 00
Banco de San German, San German, P. R.	10, 000. 00
Irving Bank Columbia Trust Co., New York, N. Y.	0. 00
First National Bank of Boston, Boston, Mass.	200, 000. 00
The Baltimore Trust Co.	300, 000. 00
Banco Agrícola de Aguadilla, Aguadilla, P. R.	9, 000. 00
Total cash on hand	10, 400, 868. 20
Available cash balance, \$700,374.39.	

Governor TOWNER. Now, gentlemen, if you would like me, I would like to make a short statement—

(At this point Senator Butler entered the room.)

Governor TOWNER. Now, Senator Butler is present. You spoke to me and said that you had some question in your mind that you were going to ask me. I would be glad to have you ask me now.

Senator BUTLER. I think perhaps you might go on with what you had in mind and later I will be prepared to ask you a few questions about this report that I have here which was placed in my hands a little while ago.

Governor TOWNER. The matter that I was going to talk about just at present was the matter of the elective governor. I think there is a feeling of apprehension existing in the minds of some of the people that it would be unwise to extend this privilege to Porto Rico, and that it is and would be a very great extension of power to Porto Rico. I think perhaps that idea is based upon not a full knowledge of the real terms and provisions of the act, but rather on the fact that they think it would be turning over without restraint all the present limitations that exist between the United States and Porto Rico.

The bill provides that in the year 1932 the governor shall be elected by the people. At the present time the governor is appointed by the President. The appointment by the President is for an indefinite time, but the election of the governor by the people will be for four years, and provision is made that the President may, as he may now, discharge or call for the resignation of the Governor of Porto Rico at any time. So, although he may be elected by the people, the President may recall him and appoint one to act as his successor for the remainder of the term. So there does not exist such

a great deal of difference between that and the conditions that exist at present.

The CHAIRMAN. Will you permit an interruption?

Governor TOWNER. Certainly.

The CHAIRMAN. It seems to me that there is quite a difference in this. In the one case the governor is appointed by the President. There would not be any reflection at all upon the people if the President should decide that he wanted some other governor. But, on the other hand, if the governor that was removed should be a governor appointed or elected by the people, would not the people regard that as a pretty serious reflection upon their capacities and would not that arouse a great deal of hostile criticism?

Governor TOWNER. Of course, it might, Mr. Chairman. Of course, there is no question but what that might be the case. I think, however, that the people of Porto Rico would approve the act of the President in any case where the removal was justified. What they want is a good governor; that is, a governor who deals fairly and acts justly with the people.

We must consider this matter as a part of our general policy, I think, with regard to all of our insular possessions. We ought to give them the largest measure of self-government of which they are reasonably capable of exercising. I don't think anyone would take exception to that proposition.

Now, it occurs to me that the record that has been made so far by the Porto Rican people and their legislation and their general relations to the United States Government, which have been increasingly friendly, increasingly harmonious, increasingly advantageous to the mutual interests both of the United States and of Porto Rico, I think perhaps in view of this record Porto Rico is justified in asking that we do something to indicate to them that we appreciate what they have done and that we are not going to stop conferring rights upon them until they have acquired self-government.

Now, if this elective governor is given to them, Porto Rico will be in a position that is very satisfactory and defensible. The United States could not possibly be criticised. Any administration that takes this action, I think I am justified in saying, will do so with the approval of the American people. I think I am justified in saying that they will feel that the United States is doing what it ought to do and what justly is its obligation, if it does extend to our insular possessions such a measure of self-government as they are justly entitled to.

Now, that does not mean in the case of Porto Rico that it shall leave it independent, because Porto Rico does not desire independence. They understand that it is a great deal better for them to be a part of the United States; and I think that if they have an elective governor given to them they will be satisfied for years and years to come. Of course, they might say that their ultimate ambition is to be a State of the Union, but they recognize the fact that that is at least away off in the dim distance. If they have an elective governor they at least will be able to have what might be called as complete a system of State government as even the States of the Union have. So, it seems to me that that objection is hardly sufficient to overcome what might be considered our obligation to the people of Porto Rico for what they have accomplished in the past.

Then, besides that, we have also, and will have under this new arrangement if it becomes a law—we will have the right of appointing the auditor, which is, under the extensive powers that he will have, a very great check. We will also have the appointment of the attorney general, which takes care of the legal situation with regard to these matters. All of the new offices of the National Government, such as the Post Office Department, are operated entirely by the United States. Our monetary system is that of the United States. Our commercial system and commercial usages are all those of the United States. The collection of the internal revenue of the United States will be under United States officers. The collection of customs dues will be under United States officers. So there will not be a very great material change in the relations between the two countries, if you choose to call them two countries, under the elective government and that of the present system.

Senator BAYARD. The same relations as far as the Federal Government is concerned exist between the Federal Government and the States of the Union as exist between the Federal Government and Porto Rico. So, even if Porto Rico were made a State, that change would not occur.

Governor TOWNER. No, sir; and I am trying to show that there is not such a great change as it is anticipated might occur, because we would have very much the same relation.

Perhaps I might be justified in adding this, which I sincerely believe to be true: If this law could be passed now, its consideration by the Porto Rican people would not be in a spasmodic, excited campaign; but the question of who in 1932, is to be chosen as Governor of Porto Rico would be one upon which they would deliberate. I feel quite sure that there are men in Porto Rico—and I could name them if it were necessary to do so—that would make just as good a governor as we have reason to expect will be elected by the people here in the United States in the States. In other words, it would not be a politician; it would be the best man. The politician's desire and ambition would have a hard time in existing for six years before they were brought to fruition. So I think that their judgment would be one of wisdom rather than of politics.

Let me suggest another matter or two that I think are very pertinent to be considered.

Where a change of administration is made, then there is a change in the Governor of Porto Rico. That ought not to be, because it is a political change and the appointments are made for political reasons. Happily they might be good, but unhappily they might and have been and perhaps sometimes will be bad. In other words, the selection is not made of the person who is best qualified to serve in Porto Rico but is made because of the fact that some good man is supposed to be adapted for service in Porto Rico, perhaps without ever having been there and without knowing anything about the people—their characteristics, their habits, their methods of thought and of life—that he is going to serve. I really believe that it would be the wiser and juster course to let the selection be made in this way, subject to the right of removal, than that it should be made by political appointments with every change of administration up in the States.

Now, if there are any gentlemen who have any questions to ask or any objections in their mind, I would be very glad indeed to have you express them and would be glad to refer to them if you think best.

Senator BAYARD. Is there anything particularly in your annual report that you want to stress?

Governor TOWNER. I was just going to call your attention to another thing. It is not necessary to put in here the record of progress, but I want to call your attention to a few items, just press items from our own newspapers. They report the weekly financial transactions of business in the Government.

Of course, you know that the price of sugar is very low. Notwithstanding the fact that the price of sugar is low, the shipments of sugar that have been made since January 1, from the commencement of this year, were 193,845 tons. These are the shipments of this year with the price at least a cent lower than it was last year. The shipments last year for the same period were 123,440 tons. So, the excess of this year over last year, notwithstanding the fact that the price is a cent lower per pound than it was last year, is about 70,000 tons. A ton of sugar is quite a good deal of sweetening.

I want to call your attention also to this fact: The San Juan Bank clearings—and that almost means the clearings for the island, because the banks there have branch banks in other parts of the island and most of the financial transactions that are transacted in the island are finally transacted in some one of them—the San Juan Bank clearings for the week—this is just for one week—ending Saturday, April 10, were \$8,819,786, as compared with \$4,482,487 for the corresponding week of the preceding year. So, you see, this week's total of bank clearings in San Juan is nearly twice as much as it was last year.

Now, of course, I think that that proportion is greater than it was during any other week; but I do not think that you can find a single week's report during this year that does not show a large increase over the preceding year. The financial condition and the progress, especially in the production of sugar, which last year was by far the greatest production, amounting to about 500,000 tons greater than had ever been produced before, a larger production of coffee, which is probably the largest production that has been made, at least for 10 or 15 and perhaps 20 years, with an increase in the production of fruits and the increase in the production of tobacco; all those indicate a prosperous condition.

Of course, gentlemen, we have poverty in the same way in our island that you have poverty in the United States. But we are trying to bring about better conditions. There has been a marked improvement and increase in the price of labor and the wages of the laboring people. There is room for a great deal of improvement there. We have a dense population and during parts of the year we have unemployment. But you do not find among the people of Porto Rico the discontent that exists in almost every country and in some parts of our own country.

It has been suggested that various immigration projects should be proposed and carried out. But when you come to try to induce these people to leave, although they live, many of them, in little one-room houses up on the sides of the mountains, you will find that

they do not want to leave Porto Rico. Porto Rico is a beautiful place to live, an easy place to live, a place where if you can eradicate some of the things now that seriously afflict the people, for instance, such as diseases—and we are opening and have opened in every large town in the island three clinics for the people who are diseased and who are too poor to purchase service; we have three dispensaries also, so that they can have medicine. We provide physicians in these municipalities for the service of the poor without charge to them.

We are every day enlarging the school facilities of the island. I think we can say, without the statement being challenged, that the progress of the Government of Porto Rico is such that it ought to make the people of the United States feel that the people of Porto Rico are taking good care of themselves and that they are using to good advantage the freedom that has been given to them and the privileges that have been given to them.

They appreciate the fact that they are people of the United States and a part of it. They are rapidly adjusting themselves to American conditions and American usages. American textbooks are used in the schools. English is taught throughout the entire course of our public school system, and exclusively after the fourth year English textbooks and English methods of teaching are used in the grades and throughout the high schools and in the universities.

If there are any further questions I should be glad to answer them.

Senator BAYARD. You say there has been a material increase in the production of sugar and coffee in the past year?

Governor TOWNER. Yes.

Senator BAYARD. Is that increase in the production of coffee due to a better crop or to better methods of handling the crop?

Governor TOWNER. It is largely due to a better price, Senator, and to better methods that are being used by the larger interests and especially in the cooperative feature which we are introducing down there.

Senator BAYARD. Has the development in better roads to the crop-growing district made a material difference?

Governor TOWNER. A very great difference.

Senator BAYARD. As a rule an increase in sugar production is due to a better method of producing sugar from the cane?

Governor TOWNER. Entirely so.

Senator BAYARD. Better mechanical operation?

Governor TOWNER. Our sugar centrales are the best centrales in the world. I think there is no question about that. I was asking some sugar experts here in Washington that know conditions everywhere and they say that the method of Porto Rico is the best.

Senator BAYARD. Does that large production of sugar reflect in any way in the employment of more laborers or by better mechanical operation?

Governor TOWNER. I don't think that it touches the labor situation. In my last report I say so. I don't think that it does. The combination in the larger areas of land taken from the small people that hold ten or twenty or thirty or forty acres of land which was sugar land is very great. They are being tempted to sell. The large centrales come to them and say, "We will give you \$500 an acre

for your land. You can take this money and you can go to town and live on the interest of it and you won't have to do anything. You can send your children to school" and all that sort of thing. It is a great temptation and unfortunately it is too often accepted. It would be a great deal better if the colonos stayed on their little farms instead of having them joined up with the larger aggregations of capital. So, I do not know what we may be able to do, if anything, regarding that matter. But I do not think that it goes to the labor situation.

This is the way that we can help the labor situation with regard to sugar transactions: When I came to Porto Rico three years ago they had just been through some very disastrous strikes in the sugar sections, owing to small payments for wages, sometimes 50 or 60 or 70 cents a day during the very busy period. Now, I found out that one at least of these centrales adopted with satisfactory results a method of paying wages according to the price of sugar, based upon the price of sugar. That is, for illustration, if the price of sugar was 4 cents a pound, which is considered as a sort of basic price, then they would pay a dollar a day wages, and when it rose to 5 cents a pound, they would pay \$1.25; and when it got up to 6 cents a pound they would pay \$1.50, and so on. That seemed to me to be a very advantageous system, so I urged very strongly upon the colonos the adoption of that sort of policy. It has been very generally adopted in the island and since then we have had no particular trouble with the laboring people.

In some instances we pay too small wages. The trouble is, of course, that the labor, while it exists so far as the cultivation of the ground is concerned, the preparation of the ground, the large development, that requires two or three or four times as many laborers as usual, is only during the cutting and grinding season, which lasts only four or five or six months.

Senator BAYARD. In other words, it is a seasonal operation?

Governor TOWNER. Yes.

Senator BAYARD. And when they get through in the seasonal centrales, then they go to somebody else for occupation?

Governor TOWNER. Yes; or sometimes it is scattered around and they are given jobs on the farms. Many of them are given work on the farms.

Senator BAYARD. So that when these smaller planters who own little plantations of a few acres sell out to the centrales, they, in turn, have to come back as laborers and add to the number of laborers on relatively the same amount of ground?

Governor TOWNER. I could hardly say that, because I am inclined to think—these people are pretty thrifty and they don't require very much. If a man had three or four acres of land and he could sell them for \$500 an acre, he could go to town and live on the interest of that very well in Porto Rico for the rest of his life and educate his family and help his children along.

Senator BAYARD. Does he invest it as a rule?

Governor TOWNER. I think that he does. I am not sure about it. I never heard that it was riotously disposed of. I don't think the people are that way. These colonos, I think, are a pretty thrifty lot of people and they try to take very good care of it if they can.

The CHAIRMAN. Senator Nye, do you have any questions to ask?

Senator NYE. No.

The CHAIRMAN. I have heard during the past year very serious criticisms of conditions in Porto Rico.

Governor TOWNER. Yes.

The CHAIRMAN. One of them relates to the financial condition. That you have already discussed. The second relates to the labor conditions. That you have discussed perhaps as fully as you care to. The third was a reference to the elections. There have been some statements made that the elections were not pure, that the election laws were not well enforced. What have you to say about that?

Governor TOWNER. Well, it is a long story, to go into that. Everything that could possibly be done, in fact, everything that was really asked for as a guarantee for such election at the last election was given. The election, in my judgment, was as fair as elections generally are through the States of the Union. There was very little difficulty. There was anticipated difficulty and some effort was made to create difficulties but we had matters so carefully guarded against that we had a very fair and effective election.

The CHAIRMAN. We have been urged at different times that there were such conditions as to warrant a congressional investigation of Porto Rico. Do you think that there are such conditions?

Governor TOWNER. No, I do not, Mr. Senator. Of course, that implies that conditions are serious. Of course, the people of Porto Rico would deeply resent such an implication. We should be very glad indeed to have any of you, all of you, at any time to visit Porto Rico and see for yourselves the conditions. In fact, nothing would please the people of Porto Rico more than to have you do that. But to go down there as an investigating committee would be an implication upon them that I do not think would be justified.

The CHAIRMAN. I just wanted to understand your view. My own view, as I have repeatedly said, is that inasmuch as Porto Rico is practically self-governing, there is no more reason for a committee of Congress to investigate Porto Rico than there is for one to investigate Ohio or Kentucky.

Governor TOWNER. I think we could find conditions upon almost every ground in some of the States that would be worse than they are in Porto Rico.

Senator HARRIS. You have seen the statement about extravagance and waste in Porto Rico?

Governor TOWNER. Yes.

Senator HARRIS. Has that been brought to your attention?

Governor TOWNER. The charges, Senator, that have been made are so very vague that they are almost impossible to answer. If you can think of any individual instance or any case in which you think extravagance has been practiced, I would be glad to have you call my attention to it.

Senator HARRIS. I don't remember any instance. I have confidence in you, Governor, but sometimes subordinates in authority are extravagant.

Governor TOWNER. Yes.

Senator HARRIS. And I was wondering whether you had approved all the—

Governor TOWNER. You see, Senator, we have a budget system. A charge of extravagance—and I am very glad that you called my attention to that—the charges of extravagance against the administration and against the government, I think, are very far from being well-founded. Let me tell you. When I went down to Porto Rico the estimates that had been made by the heads of departments and by the previous administration and sent to the legislature were for a budget of over twelve millions of dollars. Now, after I came there I had the budget reconsidered by the heads of the departments, saying that if it was possible to make any reductions they should do so. They reduced the budget to eleven million and some seven hundred thousand from over twelve million.

We operated during the next three years upon that sort of budget; but I sent a special letter to the heads of departments saying that they must not feel justified because a budgetary appropriation had been made for them in expending that unless they found it absolutely necessary to do so, and that saving should be made in other departments, if possible, below the budgetary estimates. Now, as a result, the total amount of the expenses, payments actually made on the budgetary expenses, have been reduced during the year to nearly, or somewhat over, either something over or something less than, \$500,000, a very considerable reduction.

Senator BAYARD. Where have the principal reductions been made? In what expenses, would you say?

Governor TOWNER. In various items of expenses. For instance, I asked them to do this, Senator: I said, "If you have a resignation or a death in any office in the government, if it is possible in the first place to fill that place by promotion, do so, and by successive promotions, so that the person to fill the vacancy will not be the high-priced person at the top but the low-priced person at the bottom of the list. That system was adopted. We used every means that we could.

Now, when it came to this last fixing of the budget, the resources were still less than they have been. So, after making the most careful preparations and appointing a special committee for the purpose of reducing the estimates that had been sent by the heads of departments, I sent to the legislature a budget of \$10,283,000. The legislature increased that sum to \$11,300,000. But the legislature at the same time increased the revenues by proposing a sales tax. They increased their revenues so that they would have plenty of money to pay. In fact, they have paid.

Senator BAYARD. What is the population now, Governor?

Governor TOWNER. About 1,300,000; something like that.

Senator HARRIS. I was just comparing it with my State. We have 3,000,000 people and our State budget is about \$12,000,000. So, you have about three times as much expense per capita as the State of Georgia has.

Governor TOWNER. No. It should be remembered, Senator, that that is only your State expenditures. In Porto Rico our budget has to include everything.

Senator BAYARD. The Federal expenses, too?

Governor TOWNER. Yes. As a matter of fact, our expenses are very much less than they are in the States. The per capita taxation was about \$70 per capita in the United States, \$27 of it being

national taxation and \$43 per capita being State, county, city, and municipal taxation. In Porto Rico our Federal taxation, municipal and otherwise, amounts to only slightly over \$10 per capita as against \$70.

Senator BAYARD. The newspapers charged extravagance in contracts. Did these contracts meet with your approval?

Governor TOWNER. Oh, yes. There has not been a charge of that kind made that I know of, Senator.

Senator BAYARD. Then you have not seen the Baltimore Sun?

Governor TOWNER. Yes; I saw it. I glanced over them. I noticed this man saying that another man says that these things are true. Of course, I knew that they were not.

Senator HARRIS. So, these contracts met with your approval and there was not waste?

Governor TOWNER. I think so. Of course, now, Senator, a contract, for instance—

Senator HARRIS. Senator Willis, we were just discussing the charges before you came in. I was just asking him if they met with his approval.

The CHAIRMAN. Yes.

Governor TOWNER. Of course, Senator, for instance, the Secretary of the Interior has the approval of the letting of all these contracts, and the letting of the contracts does not come to my knowledge. But no payments can be made upon it except it is dispursed with the approval of the auditor and then with my approval. There has been no contest.

Senator HARRIS. The expenditures met with your approval?

Governor TOWNER. Oh, yes; and with the approval of the auditor as well.

The CHAIRMAN. Have you any other questions? All right, Governor.

Governor TOWNER. Now, Mr. Chairman, Mr. Guerra will take up the subject.

The CHAIRMAN. I am requested to place in the record at this point a statement by Senator Mena and Representative Mendez. I will just hand them to the stenographer and he will place them in the record.

STATEMENT OF SENATOR ENRIQUE GONZALEZ MENA AND REPRESENTATIVE J. B. GARCIA MENDEZ, OF THE PORTO RICAN LEGISLATURE

Mr. Chairman, we are both members of the Porto Rican Legislature representing the two great political parties which now are forming the Porto Rican Alliance, whose immediate goal is to obtain for the people of Porto Rico the right to elect thier own governor, leaving the final status of Porto Rico to be decided by future generations as they may deem best for the interest of Porto Rico and the United States.

We are here as members of the Porto Rican delegation which is to strive for the achievement of such reforms in our organic act as are expressed in the resolution of the Legislature of Porto Rico, introduced by Mr. Tous Soto, which was placed on record yesterday. Thus, gentlemen, we wish to make clear that, in our opinion, the bonds between the Federal Government and Porto Rico by granting us the power to elect our governor will be as firm as they are at present; and still Congress and the President will have a check on the Porto Rican Government, among others, for the following reasons:

First, the Governor of Porto Rico could be removed by the President.

Second, Congress would have power to annul all laws of Porto Rico.

Third, our organic act is an act of Congress, and as such could be repealed, amended, or changed by Congress at any time.

We earnestly believe, as citizens of the United States, that it will be very beneficial for both peoples, that of this continent and that of our island, that the governor be chosen by the residents of Porto Rico.

Our gratitude—gratitude begets loyalty—would be great. Your action in so treating us with consideration and justice will show our people that the principles upheld by America's great were not formulated in vain.

A governor elected by the governed will ever be a man familiar with affairs and with the needs and problems of the people.

Lincoln's immortal phrase, a "government of the people, for the people, and by the people," was not for one single nation but for all the peoples of the world.

Considering the Kiess resolution of the House, which corresponds to the Willis resolution of the Senate, we must say, first of all, that we do not see any necessity for such a resolution. We wish to urge the committee to favorably report H. R. 11610 of Mr. Davila, which, among other particulars, amends section 20 of the organic act which provides for the appointment of an auditor, and assistant auditors, and such other necessary assistants and employees as may be prescribed by law, and which, besides, makes clear the right of the auditor to compel witnesses to produce books, letters, documents, papers, records, and other articles deemed essential to a full understanding of the matter under investigation.

We insist on the convenience of the proposed amendments of sections 3, 31, 33, and 38 of the act of March 2, 1917, entitled "An act to provide a civil government for Porto Rico, and for other purposes," as amended on June 7, 1924, inasmuch as such measures are within the scope of the resolution of the Porto Rican Legislature that created this delegation.

Mr. Barcelo, president of the senate, and Mr. Tous Soto, speaker of the house, have already addressed themselves to this committee; and Mr. Guerro, speaker pro tempore of the house, has been designated by the delegation to speak in detail as to the merits of the Kiess resolution and H. R. 11610, so we will not go any further and will leave the matter to him.

Thank you, gentlemen.

The CHAIRMAN. The committee will now hear the statement of Mr. Guerra-Mondragon, of Porto Rico.

STATEMENT OF MIGUEL GUERRA-MONDRAGON, VICE PRESIDENT OF THE HOUSE OF REPRESENTATIVES AND CHAIRMAN OF THE WAYS AND MEANS COMMITTEE, PORTO RICO

Mr. GUERRA-MONDRAGON. I shall start my remarks by taking up Senate bill 3847, introduced in the Senate by the distinguished chairman of this committee, entitled "A bill to amend and clarify existing laws relating to the powers and duties of the auditor for Porto Rico and the auditor for the Philippine Islands.

The delegation of which I have the honor to be a member thinks, with due deference and respect to Senator Willis, that the bill in question, so far as Porto Rico is concerned, is not necessary, because the powers and duties that our auditor has and performs now are pretty nearly the same as provided for in this Senate bill that I have just referred to.

The bill is aimed undoubtedly, according to what I have heard yesterday before this honorable committee, at the Philippine Islands. The whole question has arisen because of a certain claim by a merchant by the name of Ynchausti, in which case the collector of customs at Manila charged duties on a steamer, I think. They appealed to a board in Manila and then the auditor wanted to

reverse the decision of that board and found himself helpless to so act; and this bill was drafted to give him all the aid and all the powers necessary to carry out his duty.

In the first place, in Porto Rico the auditor does not pass upon customhouse duties. We are, as Professor Snow says, in your Customs Union. Claims arising out of customhouse affairs are appealed directly to Washington, to the Court of Customs Appeals, in the last instance.

Our auditor has nothing to do with our customhouse claims, just as the auditors of the States of the Union have nothing to do with customhouses. If an importer should bring through the port of New York a cargo that is dutiable, the auditor of the State of New York will have nothing to do with that; the Federal authorities will take charge of the matter. It is the same way in Porto Rico. So far as revenues from the customhouse are concerned, that auditor of ours, no matter whether this bill is approved or not, will have no power over such revenues.

If you read sections 20 and 21 of the present organic act of Porto Rico, you will readily see that no additional powers are needed. In the Philippine Islands the decisions of the auditor are only final and conclusive upon executive departments. In Porto Rico they are final and conclusive as to every executive department and as to every private claim. I will say with pride that I do not know—and my law practice extends over almost the whole period of American occupancy—of a single appeal taken to the courts from the auditor's decision.

To put it in a nutshell, what we need in Porto Rico is not bigger powers for the man, but a bigger man for the powers. And now we have a big man. We have been really honored by the appointment of Mr. Holcomb as auditor of Porto Rico. I think he comes from Massachusetts. His capacity is well known and his integrity is sterling.

In the past we have never had any trouble with the auditors. Everybody abides by the auditor's decision. There is an appeal to the governor, and that last part of section 21 of our organic act says that parties can have recourse from the governor's decision to the ordinary courts of law.

Another provision of the bill in question makes it compulsory to appeal to the Comptroller of the United States. That will be rather harsh on Porto Rican claims. The claims over there are not like the ones here, numerous; they are few and for small amounts usually. To oblige our men to come up here to attend to claims and engage the service of a lawyer would entail too much expenditure and too much delay. The policy of the Congress of the United States has been otherwise; it has been just the opposite. Two years ago you gentlemen passed a bill, which we thank you very much for, providing that the Circuit Court of Appeals, which comprehends most of the New England States, should go down to Porto Rico and hold court there. Why? For the accommodation of Porto Rican litigants. When the amount involved in the cases did not justify the expenditures necessary to carry an appeal to Boston, we had to give up those cases. In cases involving not more than \$5,000, when they had to be taken to Boston for appeal, we had to spend as much money as the amount that was involved. That is why Congress in

its wisdom passed that law two years ago, providing for the court to hold sessions in Porto Rico at such times as the court might deem fit.

If you compare the language of our present organic act with Senate bill 3847, you will find that there is almost no difference at all in the powers of and duties imposed on the auditor.

Now, in regard to the expenditures—if I might be allowed to digress somewhat in answer to a question propounded to our governor by the distinguished Senator from Georgia, Mr. Harris—I will say that our insular expenditures, what you might call our State expenditures, are not too big, when you bear in mind that our government is centralized. Most of the activities which in America are carried out by the municipalities have been centralized in the insular government. For instance, take sanitation. The money spent for sanitation is not given out by the municipalities or counties. We have municipalities and we have the insular government. Sanitation is carried on by the insular government; no municipality pays a cent. The officials are appointed by the insular government and the money is given by the insular government. Education in the States is carried on by the municipalities or by the counties. We do it by the central government. Public works also and all the activities of the departments of agriculture and labor are carried on by the insular government.

So, when you compare our general expenditures with what you might call your State expenditures, ours might seem extravagant. The State of New York does not disburse the expenditure for education for the city of New York. It is the city of New York that pays all its expenses for education and also for sanitation and for its police system.

Our police force is also under the insular government. In other words, everything is centralized.

We have, in all directions, wonderful roads. In the old times, when the road system was not as perfect as it is to-day, municipal political subdivisions were needed. People had to travel on horseback or in small buggies. To go from San Juan to Ponce meant as much travel as it does now to travel from San Juan to Santo Domingo. Everything was decentralized. But not so now.

So, if you bear all these points in mind, you will see that we are spending almost nothing as compared with our progress. For instance, in 1900 we only had 18,000 boys and girls in school. Now we have 243,000 boys and girls in school.

Egotism is against progress. Porto Rico was near to your doors. It was quite a fertile field for investment. Millions and millions went down there. We needed money to develop our beautiful island. But, again, asks a prominent writer, what is Porto Rico for? What are colonies for? Are we to be interested in their welfare or simply in the dividends we can get out of them? In dividends; that is mercantilism's answer.

Governor Towner, and in that we follow him, is simply interested in the people of Porto Rico, first of all. We are not interested in dividends at all. We want the moneyed interests to make as much profit out of Porto Rico as possible, but not at the expense of the progress and the happiness of the Porto Rican people.

Our budget in Porto Rico is about \$10,000,000. It ought to be \$20,000,000, and it will be so some day. Every good-hearted Porto

Rican will tell you so. We need that money to carry on the great advance we have made in education and other fields of endeavor. We still have over a hundred thousand boys and girls out of school. Why? Because we lack the money.

Our whole road system ought to be completed. Why is it not completed? Because we do not have the money.

So, also, about sanitation. One of the great problems of Porto Rico is that of sanitation. We have been the prey of that disease called the hookworm. We have made wonderful progress in the control of that disease, but we need money to do it. So, it is a question of going ahead and fulfilling our duty imposing the burden on those that ought to support it. In Porto Rico only 8 per cent of the population pay taxes. Ninety-two per cent have not a single piece of property to pay taxes on. If property was more equally divided, as it is in this country, then the burden of taxation would fall less heavily on the shoulders of the taxpayers.

So, we are, as you say in American slang, "between the devil and the deep blue sea." We want to advance; we want to progress. We have come to the conclusion that the only way to attain our salvation is in education. Our future lies at the door of our schools. We are now spending for education alone more than the total budget of the island in 1917.

And we need more money. The man who went down there with a purpose, thinking that the whole Spanish-American War was fought out for his own petty interests, has come now to realize he was mistaken; that the hand of Uncle Sam is not a hand that strikes, but that it is a hand that helps. And if we are to be Americans just as you are in this country, the only way to accomplish that is by bringing our people up to the level of every civilized, progressive American community.

Who are going to pay for this? Those that now criticize; those that are now finding fault?

We do not need investigating expeditions. We want you to say to us, "Go ahead," and have the manhood and the patriotism to help Porto Rico be a power for good in our national life.

I think you have the same habit here in the States. More money sometimes is spent for investigating a thing than the investigation really is worth. But we are open and ready for investigation. We will gladly welcome any investigation, because we know that the results will be very favorable to Porto Rico.

Now, there is another matter on which I would like to speak, with your kind permission. In Porto Rico the same condition has prevailed which you gentlemen met some time ago, when Congress enacted your Judicial Code, section 206, is a remedy for just such a condition. It reads: May I put in the whole section?

The CHAIRMAN. Certainly. You may put in the whole section.

Mr. GUERRA-MONDRAGON (reading):

No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such

statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid.

The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of 10 days served upon the attorney general of the State, that the suit in the State courts is not being prosecuted with diligence and good faith. The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the District Court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit.

Attorneys for our Government raised the question that as the Judicial Code is in full force in Porto Rico, in fact, all of the laws of the United States not locally applicable are in full force and effect in Porto Rico, therefore our district judge could not entertain a petition for an interlocutory injunction, under said section. The court decided against the Government and the case was taken up to Boston, to the circuit court of appeals. That court decided that as it was physically impossible to carry out this provision down in Porto Rico, our Federal court was therefore fully empowered to grant injunctions by itself.

Our legislature, in a resolution recently approved, asking for several amendments to our organic act, put in this amendment, which I introduced in the lower house. The principle is this: As the members of our Supreme Court are Federal appointees—our Supreme Court is made up of five judges, two of them being continental Americans and three Porto Rican Americans—as they are appointed by the President of the United States by and with the advice and consent of your Senate, and as they also, by law of Congress, act in the absence or in case of inability of our Federal judge, the same principles of this section should apply but with this difference: That our Federal judge can not grant an interlocutory injunction

unless it be with the concurrence of two judges of the Supreme Court of Porto Rico.

This did not mean any criticism of any of the judges of the Federal Court of Porto Rico. We have had many distinguished men on that bench down there. But it is a very peculiar coincidence that almost every law imposing taxes in Porto Rico has been declared unconstitutional by our Federal court. A similar condition prevailed here in the States. I do not mean to say that it happened in the past because of any antagonism to the insular government. It merely happened. Take the workingmen's relief commission tax. We have a workingmen's compensation act that covers even agricultural occupations. It is a compulsory law; it is not optional. Just as soon as that law was to apply injunctions were presented in the Federal court. I brought myself one of the cases on behalf of our Government up to Boston to the circuit court of appeals. But in the meantime 12,000 laborers working on the docks and steamers were without relief. We were successful.

Why was it that Congress injected this principle into the laws of the United States? So that one judge would not have the right or power to personally issue these injunctions, but would be obliged to concur with two more judges, you having passed under the same state of affairs. We want you to extend the application of this section to Porto Rico. This, of course, is not said with any spirit of criticism of either the present incumbent on our Federal court or his predecessors. Every tax law is systematically assailed.

Our sales tax law as soon as we had enacted it and put it into effect was challenged in the courts, with the result that the Government's money is tied up there until that case is finished. So far our Government has won the case.

We had similar suits in the insular courts. The tax on sugar was delayed for almost three years. They have paid it this year. Our income tax law, which is but a copy of your Federal income tax law of last year, was also attacked because of its retroactive effect. It has been sustained by our courts.

We passed a law, following progressive leaders in America, for the purpose of developing the water power of our island. That is a great issue now in New York State, as you know. Porto Rico has no coal and no oil. Porto Rico is a great agricultural community.

We want Porto Rico to be developed into an industrial community as fast as we can. In order to accomplish this end we need water power.

No sooner was this law approved by the legislature providing for a tax than in comes a petition for an injunction. I respect a judge's decision. I always do. I never criticize them. I merely appeal. Why should not three judges pass upon measures that mean the whole policy of the government, that mean the whole life of the community? To-day we have \$5,000,000, gentlemen of the committee, just the amount of our deficit, tied up in the courts.

You gentlemen are big, financially speaking, as well as morally speaking. You can have \$5,000,000 tied up without ever noticing such an amount of money. But in Porto Rico a single million dollars tied up means one-tenth of the whole budget of the island.

I say this: Are we to run a government for the benefit of the few men that want to contest every law that we pass? Or do we

want a government for everybody, for all? The application of this section, providing for the concurrence of three judges, would give these men their day in court and at the same time would allow a more thorough study of these matters, because, as we say in Spanish, "Four eyes see better than two eyes."

As to the auditor: The word "claim" is used in the bill, Senator Willis's bill, and is also used, as you will notice, in our present organic act. The taxes will not go through that channel, of course; we have a system for that purpose very similar to the one prevailing in Washington. We have our board of review and equalization.

According to our income tax law the taxpayer is his own assessor. He presents his return and gives his own figures under oath and then on those figures the treasurer imposes the tax, but reserves the right under the law to have five years to investigate and examine that person's books. If within that period of five years it is found that in that taxpayer's return he has hidden something he is assessed for the additional amount. The taxpayer then has the right to appeal to the board of equalization and review and from that board to the courts.

Now, Mr. Chairman and gentlemen of the committee, I don't want to take up any more of your time and I thank you very much for your courtesy in listening to me. But there are three points that I would like to bring out.

The CHAIRMAN. I would like to hear you, but the committee is very desirous of closing these hearings as soon as possible. We do not want to foreclose anybody. If you have some other matters which you desire to present, we will let you do so to-morrow morning at 10.30.

Mr. GUERRA-MONDRAGON. Thank you.

The CHAIRMAN. The committee will stand adjourned until 10.30 o'clock to-morrow morning.

If we can, we would like to close these hearings this week. It is impossible for the committee to make a report on these bills while the hearings are going on. We are going to go right straight ahead with the hearings and get through. We will meet again at 10.30 to-morrow. Mr. Iglesias has wired me from New York saying that he desires to make a statement. We will hear from him next. Judge Malmin, of Chicago, has been desirous of making a statement on the Virgin Islands to the committee. We will hear him as soon as we get the Porto Rican matter out of the way.

(Thereupon, at 12 o'clock noon, the committee adjourned until Thursday, April 29, at 10.30 a. m.)

AUDITOR FOR PORTO RICO AND THE PHILIPPINE ISLANDS

THURSDAY, APRIL 29, 1926

UNITED STATES SENATE,
COMMITTEE ON TERRITORIES AND INSULAR POSSESSIONS,
Washington, D. C.

The committee met, pursuant to adjournment, at 10.30 a. m. in the Committee Room, Capitol, Senator Frank B. Willis presiding.

Present: Senators Willis (chairman), Bayard, Butler, Harris, and Nye.

The CHAIRMAN. The committee will be in order.

I place in the record a cablegram which has just come to me, as follows. It is directed to the chairman of the committee:

Porto Rican organizations affiliated American Federation of Labor and 56,000 votes request legislation against landlordism and absenteeism. Chief problems absorbing vitality of our island disastrous economic and social conditions. Urge investigation by Congress before amendment our organic act. Legislative commission now Washington represent only a part of our people. Elected in fraudulent election, corrupting American institutions of liberty and justice.

RAFAEL ALONSO, *Representative at Large.*

We are very desirous of concluding these meetings. Judge Malmin is here from Chicago and wishes to speak on the Virgin Islands. We want, if possible, to bring this hearing to a close. Mr. Iglesias, are you ready to proceed?

STATEMENT OF SENATOR SANTIAGO IGLESIAS

The CHAIRMAN. Make your statement as brief as you can, because the committee has been in session for many days and wants to finish.

Mr. IGLESIAS. Mr. Chairman, to establish the character of my representation to talk before this hearing I desire to say that I am a senator representing the minority party in the Legislature of Porto Rico. The gentlemen who have been introduced by Governor Towner and have been talking already for two days have presented their views to the committee on one side, representing the majority party of the Legislature of Porto Rico. At the same time I want to say to this committee that my appearance at this hearing is in behalf of the greatest bulk of the workers of the country and the cities. So, what I have to tell to this committee will be as representing the greatest majority of the people of Porto Rico.

Senator BAYARD. May I interrupt you? You say you represent the minority?

Mr. IGLESIAS. Yes.

Senator BAYARD. The view which you present is a different view from that presented by the other party?

Mr. IGLESIAS. Absolutely.

Senator BAYARD. But you don't disagree in regard to the general facts as stated by the proponents of the majority?

Mr. IGLESIAS. Yes.

Senator BAYARD. You generally agree with the facts, but you have a different remedy?

Mr. IGLESIAS. I have several views different to what they proposed here. But I have to say this, because I am in a way unfortunate. A part of the people want to be heard before the Congress of the United States, but they are only represented by the minority of the people and they have no time to talk.

Now, permit me to present for the record a copy of a memorial addressed to the President of the United States and Congress. This memorial was signed by 13,000 Porto Ricans, citizens of the United States, and was handed to the President at the White House. This memorial, without describing it in detail, practically supports the concurrent resolution No. 11, introduced by Senator Pittman, to investigate conditions in Porto Rico. I desire that this memorial, with the resolution, can be inserted in the record.

The CHAIRMAN. Without objection, it will be entered in the record at this point.

(The papers referred to are as follows:)

(Copy of a memorial handed to the President and Congress of United States authorized by the signatures of 13,000 Porto Ricans, citizens of the United States.)

FREE FEDERATION OF WORKINGMEN, OF PORTO RICO—AFFILIATED WITH THE
AMERICAN FEDERATION OF LABOR. FOUNDED JULY 14, 1899.

SAN JUAN, P. R. *September 30, 1925.*

THE PRESIDENT OF THE UNITED STATES OF AMERICA,
THE CONGRESS OF THE UNITED STATES OF AMERICA,
Washington, D. C.

SIRS: We, the undersigned, citizens of the United States of America, born and residents in the island of Porto Rico, respectfully appear and state to your consideration—as you are the genuine representatives of the people of the United States—the evils that suffer the whole community of Porto Rico, and specially its countrymen and labor classes, with the purposes to obtain adequate remedies from the only authorities that can remedy them all.

Porto Rico is suffering such a social and economic condition that the results are misery and poverty. Of this condition the Government of the United States is charged by those who are interested to break the good relations between both countries despite the fact that they are receiving the greatest benefits of such relations.

The resources of our land are absorbed and controlled in such a form that the Porto Rican people are practically organized and constituted just like a factory worked by industrial slaves.

Although Porto Rico produces each year wealth to the amount of many millions of dollars, 70 per cent of each year's earnings go to the outside in the form of dividends and interests to the stockholders and bond-holders who reside in the great European and American cities. For that reason our money in circulation hardly reaches to \$4,000,000, making impossible the creation of new industries and means of life, affecting, therefore, the structure of our government.

The total public debt of the insular amounts to \$26,000,000 and of the municipal amounts to \$15,000,000, which totally amounts to \$41,000,000. At 5 per cent annual interest the country will have to pay in 10 years about \$60,000,000. Bond issues at present extend to the year 1954. We are, therefore, in a complete bankruptcy.

An invisible power represented by the great accumulation of capital resident and nonresident intervene and determine by their contributive action as to what extent our insular budget can reach, as well as the proportion of public services that can be attended.

In challenging before the courts all the contributive means of the government of Porto Rico, it, by those powerful interests disrupts the public treasury to the extent of a deficit amounting to about \$5,000,000, and to cover it, the public budget has been reduced to the detriment of the public services, instruction, and civilization of the people of Porto Rico.

Owing to the lack of money the public health does not receive the necessary attention. Anemia, tuberculosis, malaria, and other diseases kill annually thousands of children and make of our population a graveyard of living beings.

Considering a population of 1,400,000 inhabitants, the average of illiterates is still high. The nation which discovered Porto Rico left us an average of 75 per cent illiterates, which has been reduced to an average of 60 per cent, 40 per cent of the population of Porto Rico are born and die illiterate. At this time the great interests of borbonic type are trying to hinder the course of culture and civilization commended by the law of progress and the democratic institutions that the people of the United States have established in Porto Rico, reducing, moreover, our school budget \$400,000; thus reducing the number of elementary schools by 200 and depriving 50,000 children of an education and a great deal of the school instruction that gives special knowledge to prepare them for life's struggle.

All the valuable services concerning the public welfare have been cut off to please all those who refuse to pay the taxes, and they also have restrained our public treasury, challenging before the courts the tax laws, reducing, therefore, the activities of the government just at the same level of misery of the people of Porto Rico.

Although our land has means and resources to promote all classes of industrial enterprises, three-fifths of the laboring population of Porto Rico lack permanent employment. Their wages are very low, as a result of which their food and shelter do not give them the adequate means to develop a type of sound and vigorous citizen. Although there exists a principle that the law protects all as equal, it is true that in the Pacific industrial struggles that have been conducted in Porto Rico to better the conditions of work and life of the wage earners, horrible tragedies have been caused by the exploiters of the laborers. The prisons opened their doors to lock in hundreds of workmen; judges have imposed the maximum of the sentence upon laborers; peoples and towns have been frightened by the public forces shooting their rifles, and some agricultural workers, heads of families, have been murdered while the great industrial and agricultural concerns are developing enormously rich.

We have no safety laws on the fields, factories, and shops. Great deal of the legislation to protect labor is ignored or is amended so as to make them impracticable.

The health department doesn't carry its assistance and its knowledge over the sick peasant population, which lives unprotected upon the peaks of our mountains.

While the working people earn meager wages, they have to bear now a new burden in the sale tax law, which will be paid by them, increasing their cost of living over 25 per cent. Already living expenses in Porto Rico are nearly 20 per cent higher than in the United States. Still industrial laborers receive an average of \$1.50 per day, and field laborers receive an average of 60 cents.

These meager wages will be the principal means of income that the public treasury of Porto Rico will have, as the laborers—men, women, and children—do not even own homes nor receive sufficient salaries by which they can pay property tax or income tax, and because the rich people refuse to pay the necessary amount for supporting the government administration, it falls, therefore, on the shoulders of the laborers of Porto Rico, who number approximately 800,000.

Congress of the United States has granted to Porto Rico an insular assembly elected by the people and a bill of rights similar to that enjoyed by the people of the United States of America; nevertheless, few constitutional rights are enjoyed by the people of our island, as if we were second-class citizens.

And about the rights of suffrage, the people of Porto Rico have had the bitter experience on the last election that has created a doubt in their minds—if it is possible to use it freely to elect their genuine representatives to make the necessary changes in behalf of the welfare of the whole people of Porto Rico.

Great outrages, abuses, crimes, and illegalities mark the last election held in Porto Rico on November 4, 1924. The right of suffrage was practically denied to the people. The polls were controlled by only one political party. The popular sovereignty could not exercise its rights and franchise, and there emerged from the ballot boxes a new legislature which is not the true expression of the popular will.

The law to challenge elections before the courts of Porto Rico has been repealed, by means of which the people have been deprived of any legal remedy.

In such conditions, therefore, we have an organized despotism; a tyranny. It constitutes a monopoly in its essence and form because that which they could not obtain as a true expression of the ballot boxes they have obtained by using the legislation to deprive the rights of the minority from having a fair and just representation in the commissions of the government of Porto Rico.

When only one political party controls and speaks for the whole community, it is impossible that democracy could survive.

With the purpose to maintain and impose the domain over the whole people of Porto Rico that political oligarchy is trying now to obtain from Congress of the United States the right to elect the governor of the island—now appointed by the President of the United States—to obtain power to impose tariff duties upon the importations; to change the Federal court in order to influence or control its decisions; that is, to get absolute domain upon institutions, life, and property of the Porto Rican community.

Such idea became a new form to sever Porto Rico from the national life, and occasionally creates the theory to divide the citizenship in two classes—citizens enjoying all the constitutional rights, and colonial citizens without due constitutional rights.

The people of Porto Rico do not like to be considered either a colony or a possession. We wish to be considered a part of the United States with the full rights and duties within the national life.

Porto Rico has suffered four centuries of colonial system which has burdened us with bitter experience and sufferings.

All colonial systems are hateful to the human conscience, and the people of the United States of America that have written such bright pages in its history to free itself from the colonial system, and has given its valuable support to many foreign countries to conquer and enjoy their natural rights and liberties, could not support now such a colonial system in Porto Rico under the American flag.

Porto Rico should be under the protection and administration of the Department of the Interior of the United States, but Porto Rico continues as a military possession under the War Department.

We furthermore declare that the economic social and political conditions of the people of Porto Rico are intolerable and they urge a fundamental change in behalf of the welfare of the inhabitants of the island of Porto Rico.

We appeal to the high spirit of justice and love of mankind of which so many proofs have been given the people of the United States of America, and respectfully request the President and Congress of the United States:

To appoint a joint commission to come to Porto Rico, to hold public hearings, look over and ascertain facts and conditions in all parts of the island, and after a careful examination and study of all the facts, submit to the President and Congress of the United States whatever recommendations it thinks convenient to insure the economic, social, and political welfare of the people of Porto Rico.

We speak in the name of thousands who work—those who make and use tools—those who furnish the human power necessary for commerce and industry. We speak as part of the nation and of those things of which we have special knowledge.

Our welfare and interest are inseparably bound up with the well-being of the nation. We are an integral part of the American people, and we are organized to work out the welfare of all.

With our best good faith and hoping to obtain justice from you, we sign this resolution in San Juan, Porto Rico, United States of America, at the 7th day of September, 1925.

Respectfully yours,

EXECUTIVE COUNCIL OF THE FREE FEDERATION
OF WORKINGMEN OF PORTO RICO.
EMILIO FARISA, *Presidente pro tempore*.
RAFAEL ALONZO TORRES, *Secretary-Treasurer*.
F. PAZ GRANELA,
SANDALIO H. ALONSO,
LINO PADRON RIVERA,
SIXTO A. PACHECO,
F. JOSE FERRER Y FERRER,
Vice Presidents.

[Senate Concurrent Resolution 11, Sixty-ninth Congress, first session]

Whereas it has been reported to the President and the Congress of the United States, through memorials signed by many citizens and organizations of Porto Rico, testifying to facts as to the intolerable conditions which exist among the people of the island of Porto Rico, and conditions which reflect discredit upon the Government of the United States; and

Whereas it has been urged upon the past and present administration, time and again, that the Congress of the United States shall make a full and complete investigation into the economic, industrial, and social conditions existing in the island: Therefore be it

Resolved by the Senate (the House of Representatives concurring), That a joint committee of the Senate and the House be directed to investigate the political, industrial, economic, and social conditions in Porto Rico, and report their findings and recommendations to the Senate and House as speedily as practicable; and be it further

Resolved, That said joint committee of the Senate and the House be composed of three Members of the Senate and three Members of the House, who shall have authority to hold hearings and to take testimony in the city of Washington, and in San Juan, Ponce, Mayaguez, and elsewhere in Porto Rico, and to such end such committee is authorized and empowered to sit during the sessions of Congress, or when Congress is in recess or vacation, and to issue subpoenas to compel the attendance of witnesses and the production of evidence.

Mr. IGLESIAS. Without disagreeing, Mr. Chairman and Senators, with many of the views expressed by the delegation representing the majority party in Porto Rico, especially in regard to the election of the governor in 1932 or 1940 or when Congress will see fit for it, I have some other points of view to present to this committee, especially in regard to the conditions that call for a thorough investigation of the conditions of the island.

I have no intention to oppose political gains, or the spirit of democracy, or progressive reforms in that island. That sounds very good for the island of Porto Rico. This investigation that we are asking, Mr. Chairman and Senators, does not reflect humiliation of any sort or any reflection against the men in our administration. We are asking for an investigation for the first time after 27 years.

We come to the Congress of the United States to show them what was the result of the last 27 years of progressive, wonderful progress in the island of Porto Rico; but, at the same time, what was the result, and where was such progress, such a wonderful wealth, obtained? I want to say that we have at least half a million people practically starving to death. We have a half million people naked and barefoot, practically without homes. We have a situation whereby there is a single job for every five people.

Senator BAYARD. May I interrupt you there? You mean by that that those people are practically homeless on account of the seasonal occupation? Do you mean that during the period of seasonal occupation they are afforded places to live in by their employers and when the seasonal occupation is over they are without homes? Is that what you mean, Senator?

Mr. IGLESIAS. Yes, sir. The States do not grant any kind of investigation, because they are sovereign and at the same time they have plenty of representation in the Congress, in the Senate and House. Porto Rico has only a Resident Commissioner whose voice in Congress, because it has been agreed to grant it, is heard. The minority party has not even a right to speak before Congress.

Before going further, in order to inform you that I have some authority to talk about Porto Rico, I will tell you that I have been for 29 years working hard for what I thought was the welfare of the working people and especially of the people in general. I was prompted to telegraph you asking and requesting to be heard before this committee because I received this telegram:

NEW YORK CITY, April 19, 1926.

Senator SANTIAGO IGLESIAS,
Care American Federation of Labor,
Washington, D. C.:

Please wire whether you accept appointment made by me in your favor which was sent you some time ago from Porto Rico as member legislative commission ask Congress amendments our organic act according last legislative resolution. Greetings.

BARCELO.

To which telegram I answered:

Senator ANTONIO BARCELO,
Hotel Ansonia, New York City:

Sorry have not received any notification of my appointment as member of the legislative commission, but I will cooperate in anything that may bring about better conditions to the welfare of Porto Rico. Greetings.

SANTIAGO IGLESIAS.

I ask that this be put in the record.

The CHAIRMAN. It will be in the record. You read it. It will go in the record.

Mr. IGLESIAS. Now, reviewing briefly the conflict and tragedy that causes ever-increasing bitterness industrially, economically, and politically in Porto Rico, let me say that the economic and political conflicts in Porto Rico are neither temporary nor sporadic. There will be a never-ending, bitter struggle for life and justice unless the Congress of the United States wants to go to the bottom of the problems and do its duty. The ills of Porto Rico are deep-rooted and go down to the fundamental system of its economic structure, government and citizenship. In fact, it is neither a question of appointing any particular individual to the governorship of the island nor of getting the domination of some particular political boss or party. Even the abuses and crimes committed in the last election to rob the workers of votes do not constitute the most important question involved in the social tragedy that is going on in Porto Rico.

The big issue of that island may be clearly stated as follows: Shall Porto Rico be developed in the interest of the natives and resident American producers of the island, paying a fair return on

invested capital, or shall the resources of Porto Rico be exhausted for the benefit of the profiteers, bankers, and bond clippers of the United States, Spain, and other European countries to an extent that means for Porto Ricans in general poverty, hunger, and degradation?

The words in which the great leader, Samuel Gompers, described the island of Porto Rico after his last trip there were as follows:

That such poverty and misery, with their essential immorality and degradation, can exist under the authority of the Republic of the United States is a stigma upon the record, the history, and the honor of our country. It is appalling to think that such conditions prevail in Porto Rico.

Almost the same conditions prevail to-day in the island.

The infant mortality of Porto Rico, by reason of lack of milk and excessive poverty, is about three times more than that prevailing in the United States. Thousands of children are dying of actual hunger.

The situation we have tolerated in Porto Rico—I am talking as a citizen of the United States—whether ignorantly or carelessly, is a crime. If we profess to have any conception of the sacredness of human life, any regard for human rights, how can we stand responsible for what is going on in Porto Rico?

The President of the United States knows the facts through a memorial that was handed to him recently, supported by over 13,000 citizens of that island. The subject of the memorial involved the principles of elementary justice and humanity for the people of Porto Rico, according to American ideals. A copy of this memorial is attached to this statement.

The people of Porto Rico are suffering the colonial consequences of a chaotic and most terrible economic organization of absentee landlordship and financial powers. The main facts are as follows:

(1) The rapid development of illegal monopoly of lands and wealth in the island, by powerful resident and absentee individuals and corporations.

(2) The violation of the organic act and the laws of the island.

(3) The refusal by powerful corporations and individuals, resident and absentee, to pay taxes proportionate to the increase in wealth produced to support necessary public services.

(4) The steady emigration of 60 per cent of the profits produced in the island, representing an appalling amount of underpaid labor and initiative that goes to enrich other communities at the expense of the misery and wretchedness of the people of Porto Rico.

(5) The impossibility of developing industries in the island while the interest on money is 12 to 24 per cent.

Considering a population of 1,400,000 inhabitants, the average of illiterates is still high. The nation which discovered Porto Rico left an average of 80 per cent illiterates, which has been reduced to an average of 60 per cent. Many thousands of the population of Porto Rico, nevertheless, are born and die illiterate.

Living expenses in Porto Rico are nearly 20 per cent higher than in the United States. Yet industrial laborers receive an average of \$1.50 per day and field laborers, unskilled, receive an average of 60 cents. Children and women work for 30 cents a day. Although the island has means and resources to promote industrial enterprises,

three-fifths of the laboring population of Porto Rico lack permanent employment.

By checking reports from doctors and the civil registry, Dr. T. C. Townsend, of the United States Public Health Service, said:

A careful scrutiny of reports from various sources, together with personal field observation, places the number of clinical tuberculosis cases on the island at about 14,000, 8,000 of whom have consulted the doctor or have been under treatment, while the remaining 6,000 are going their ways with their conditions in all probability unknown to themselves and the medical profession.

The factors causing tuberculosis in Porto Rico are obvious:

A survey of over 1,000 houses among the laboring classes in seven of the larger cities of the island reveals an average of six people living in a two-room house with one window to each room averaging 95 square feet and all doors and windows closed at night to keep out the life-giving substance, which is so dreaded—the night air. Result, tuberculosis.

The average diet among the people most heavily infected with tuberculosis is the kind of diet you would select if it were desired to take steps to propagate the disease. For breakfast, black coffee; dinner, rice and beans, always; sometimes bananas, plantains, and bread. Supper (if any) the same.

That is the diet of hundreds of thousands of citizens of the United States in the island of Porto Rico.

General Frank McIntyre, Chief of the Bureau of Insular Affairs, reported to the Secretary of War in 1924 in a very intelligent report—

That the people of Porto Rico were poor beyond anything which has come within the experience of the United States and bordered at all times on a condition of famine.

Even education is a bad thing for the Porto Ricans.

A great deal has been done in the way of education—

Said General McIntyre—

but it is doubtful if education under the conditions can do much more than create dissatisfaction with a condition which becomes the more intolerable as it is the more intelligently viewed.

In Porto Rico, for the first time, the United States is brought face to face with the conditions arising from a population too dense to be supported by the territory inhabited. In other words the only solution for the difficulty existing in Porto Rico at all within reasonable possibility of attainment is to transfer in some way a great part of the population to some other district.

And then General McIntyre says:

The evidence on every hand of prosperity and progress in Porto Rico and the prosperity and progress shown by the commercial statistics and by the increased revenues by the government may easily mislead one into the belief that progress in all directions has been satisfactory. This is not the case. It has been impossible to distribute this progress in Porto Rico in such a way that the very large extremely poor element of Porto Rico could participate fairly in it. These people, because of their relative helplessness, must for some years receive special governmental consideration.

In a report just a few days ago the Department of Commerce expressed frankly the same conception and the same views that General McIntyre has expressed. If you pay attention also to the reports taken in Washington, not going there, from the Department of Labor and the Child Labor Bureau, you will find what the conditions of Porto Rico, of the masses of the people, not of the few, of course, the masses of the people are.

Official statistics also show that in the last 25 years, imports from the United States into Porto Rico amounted to over \$1,125,481,174, nearly a billion and a quarter, and that the exports from Porto Rico into the United States amounted to \$1,350,666,929. Two-thirds of the profits accruing from agriculture, commerce, and industry have been sent out of Porto Rico as rents, dividends, commissions, and interest on borrowed money, which were distributed and reinvested outside of the island.

That is one of the colonial situations. In Porto Rico, with only one-third of the wealth created by the people of Porto Rico remaining there, the progress that is wonderful has gone to a few, but the great masses remain just the same as they were 30 years ago. This colonial condition has created a most distressing state of affairs for more than half of the Porto Rico population and has caused an enormous oversupply of labor which has resulted in thousands of women, children, and men slowly starving to death. I really think that Congress has something to investigate in Porto Rico to cause a change of conditions, a reconstruction of the economic body of Porto Rico.

At this point I want to impress on your minds, Mr. Chairman and Senators, that the same condition, that new economical and industrial trouble in Porto Rico, is just the same as the trouble 70 years ago was in the colonies of England, such as Newfoundland and Australia, for instance. If you study how those people ever became happy with economical independence, you will see. I think the United States is a Nation with so great institutions that it can more easily do much more for this colony, that is the only one that comes from the Spanish régime and the Spanish history of 400 years. The result of it will be reflected on all sides in Central America and Mexico. They will see what the institutions of the United States can do for the little, beautiful, wonderful island, as it is.

The joint resolution approved by Congress March 1, 1900, with regard to the buying, selling, and holding of real estate in Porto Rico says:

No corporation shall be authorized to conduct the business of buying and selling real estate or to be permitted to hold any real estate except such as may be reasonably necessary to enable it to carry out the object for which it was created, and every corporation hereafter organized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed 500 acres of land, and this provision shall be held to prevent any member of the corporation engaged in agriculture from being in any wise interested in any of the corporations engaged in agriculture.

That is a law of Congress, intended to protect the island of Porto Rico, intended to protect the people against monopolization and control of the island.

This law of Congress has been grossly violated in order to enslave the people. We have a monopolistic holding of land in the island of Porto Rico. Holdings of land by corporations, associations, and partnerships are controlling from 10,000 up to 125,000 acres of the best land of Porto Rico; no matter if the law does not permit the holding of more than 500 acres. The result is that the great part of the east, the south, and the north of the island is controlled by a few absentee landowners and consequently thousands of working men and women in these sections of the island are practically slaves

of these corporations. Furthermore, these corporations, after grabbing all this land, are destroying the villages and towns and cities. They are taking the commerce and their industry. The people have not a piece of land where to live. They have to live in the premises of the centrales, where they lose even their freedom as citizens.

By virtue of our coastwise trade the people of Porto Rico are obliged to consume the domestic articles of the United States, whose cost is increased by tariffs; and the superior status of the standards of living conditions and wages of the United States control, of course, the price of the merchandise sent to Porto Rico. While the working people earn meager wages they have to bear now a new burden in the sale tax law, increasing their cost of living over 20 per cent.

The corporations have challenged before the courts the contributive means of the Government of Porto Rico, causing the disruption of the public treasury to the extent of forcing a deficit amounting to about \$5,000,000 in the current expenses.

It is also estimated that a dozen powerful corporations and individuals altogether have managed not to pay the Government of Porto Rico in the few last years for taxes amounting to over \$10,000,000 that never has been collected and never will be paid.

Something ought to be done to investigate these conditions in Porto Rico, not to reflect on anybody or any administration, but maybe because the tremendous powers there are against even the laws that are approved by the Congress of the United States and our organic act. The laws of the legislature of Porto Rico there are absolutely disregarded.

Several remedies for a change of the situation have been suggested as follows:

Congress and the President have been requested to appoint a joint commission to hold public hearings in Porto Rico, look over and ascertain facts and conditions in all parts of the island, and after a careful examination and study of all the facts, submit to the President and Congress of the United States constructive recommendations to insure the economic, industrial, social, and political welfare of the people. This commission should be one that will not be satisfied with official and private courtesies, and impressed solely with the scenic and natural beauties of the island, but a commission that will go to the heart of things and learn of the people's sufferings and wrongs, so that it may bring back to the Government of the United States information that will aid in stamping out the distress and misery prevailing upon the island and the calamity that threatens not only the well-being but the very lives of the people of Porto Rico may be averted.

At this time, Mr. Chairman and Senators, the taxpayers of the big corporations are already raised up in arms against what they say is an extravagant budget for the island. If 1,400,000 people with \$11,300,000 for proper service from the Insular Government directly could not do much for their country, I agree with Mr. Guerra that we want a budget of \$20,000,000. Sure we want it.

Can Porto Rico pay the expenses of such a budget? Sure it can, provided that these corporations, provided that these great enterprises pay in just the same way with the same willingness as the

poor peasants and the poor industrial people are paying in the island.

But everything had better be seen by Congress. Congress has never done any investigating there. We do not ask an investigation to see what Governor Towner has done or what his predecessors have done. No. What we want is to create factories and work for the people.

Mr. Chairman and Senators, I am not thinking liberally of the conditions of the people, nor in a spiritual way. I do not want to be here as a hypocrite telling that the contentment will come only with the election of a governor, that the solution is in that alone. If we will say that alone, we are just misleading the Congress of the United States. It is not only a political question. It is not because the majority party have gone for the next election. No.

The people of Porto Rico at this time are protesting against the misery and the horrible conditions that they do not know how to remedy of these masses of people. They are looking to the United States as a protector, as the savior. Are you going to say that you have nothing to do with this?

When we complain of conditions over there they say, "America has the responsibility." Instead of trying to adjust everything there in their actions and have their mistakes and errors corrected, they will say, "Oh, the Americans are responsible. Let us go to Congress and see Congress." When they persecute even the most poor worker they will say, "It is Congress; it is the United States; it is the American flag that is responsible."

No matter if we have under our jurisdiction the people of Porto Rico, no matter if we have a central government and rights in the legislature; we have not the means to make happy the workers and the masses of the people of Porto Rico.

We want to see Congress going to Porto Rico and seeking from Ponce in the south to San Juan in the north and from Mayaguez in the west to Humacas in the east. They will know everything. They will know all that is going on to help, to aid the island of Porto Rico.

Has Congress a means to save the conditions through the proposition of General McIntyre, of taking out from the island 300,000 families, if possible, to other districts? The proposition has been going on as a remedy; but now, Mr. Chairman and Senators, is this a remedy, to say to the natives of Porto Rico, "Why don't you leave your country?" when they know that thousands and thousands of acres of land are producing richness and wealth in their country? They would rather live in their homes in their humble way. That is not to me a remedy. Maybe it is a remedy for industry to open its doors and nobody has the right to stop anybody from going anywhere to work. Well, in that way, all right. But as a remedy from Congress, from the United States, from the representation of the Federal Government, to their poor island it is not a remedy at all.

What I want to impress upon you is about something that has been said, Mr. Chairman, about the three questions of finance, labor, and elections.

In the financial situation there are several points, several questions, that have been raised in Porto Rico. You will have to study those, because I am confident that you will think us a poor people. They ask something as an agricultural people.

The majority parties come here to express their views. Governor Towner is the authority of Porto Rico. Very good in general. Everybody knows Mr. Towner has been good. But I do not agree with him myself in the point of elections.

The elections, it seems to me, have been sinister to the people of Porto Rico, not because of what we have lost, but because of the principle, because of the education, because of the belief, the belief of the people of Porto Rico in the American flag and in the American institutions to take care of their rights. They think that it is the United States' responsibility for everything that is being done in Porto Rico.

Now, another remedy should be that the provisions of the joint resolution approved by Congress on May 1, 1900, should be enforced. You should grant the legislature of Porto Rico authority to impose additional and progressive taxes on all property owned and controlled in excess of 500 acres by corporations, partnerships, associations, and individuals, and to tax the real property and income of the nonresidents of the island in excess of the property and income of the residents.

Another remedy would be for the Congress of the United States to loan to the government of Porto Rico \$50,000,000 through adequate legislation approved by Congress, for the following purposes: (a) For promoting to the fullest extent American life and supporting the agricultural and industrial pursuits; (b) to foster the physical and permanent industrial development of the resources and the soil of the island, and the financial credit; (c) to transfer the control to the people of Porto Rico of all lands and franchises illegally held by absentee or resident landlordship and corporations; (d) for the consolidation and cancellation at any time of the public debts of Porto Rico.

The Congress of the United States can do much for us. You have done it for all the countries of Europe. You are doing it now. So, I believe that the same thing can be done for Porto Rico. No amount of explanation can persuade the people of Spanish America that our professions and idealism have any value if we remain indifferent or blind to the sufferings of Porto Rico.

I appeal to you in the interest of humanity to help us to investigate the wrongs of the people of Porto Rico.

The CHAIRMAN. Have you completed your statement?

Mr. IGLESIAS. Yes. I have finished.

The CHAIRMAN. Now, Mr. Guerra-Mondragon could not quite finish his statement yesterday. We will hear from him now, and after him, if there is any time left, we will hear from Judge Malmin, of Chicago.

STATEMENT OF MIGUEL GUERRA-MONDRAGON—Resumed

Mr. GUERRA-MONDRAGON. Mr. Chairman and gentlemen of the committee, I heard with a great deal of attention the remarks just made by Senator Iglesias on behalf of the minority party of the island. It should be borne in mind that when our distinguished senator speaks for the American Federation of Labor he does it, nevertheless, for an American Federation of Labor which, contrary to methods prevailing in this continent, is in full, deep politics in

Porto Rico. It is not so in the United States. In our island they have a party of their own. They are the minority party.

A line must be drawn, therefore, between politics and facts when you come to consider our problems as presented by Senator Iglesias. Humanity is not all he has in his mind. That might sound very noble and lofty; but the politics of his own party—the Socialist Party—of which he is the recognized leader—enter a good deal, as I will soon show, into his campaigns and statements. To bring a purely local political issue to the Senate of the United States is, to say the least, an improper thing to do.

Senator Iglesias starts by saying that conditions in Porto Rico have not been investigated during the last 27 years. He is horrified at the idea that such an investigation has not yet taken place in so long a time. But why—we say—such an investigation? What has happened? What is happening?

Nothing but good things are happening in Porto Rico. In all this long period of time, why did not the distinguished Socialist senator ask for this same investigation 10 years ago, or 15 years ago, or 20 years ago, when the children at school only reached the figure of 18,000, as compared with the 250,000 children we now have attending our free public schools? Why did he not ask for an investigation when our road system only numbered 280 kilometers as compared with the 1,700 kilometers of fine, first class roads we now have? Why did he not ask for an investigation of conditions when infant mortality was 30 per thousand as compared with the 18 per thousand rate we now have? Why did he not ask for an investigation 15 years ago when we did not have a workingmen's compensation act, as the one we have now, covering every activity whether agricultural or industrial? Why did he not ask for an investigation 10 years ago when we did not have the "minimum-wage" laws we now have in full force and effect in Porto Rico? Why? Because then the Socialist Party was not in existence and because now a political issue of this nature would be a very handy and convenient material to serve party ends.

It is true, of course, that conditions generally ought to be improved in Porto Rico. That is what we are doing every day. The same thing holds true with you, among yourselves, here. You, also, have poverty in the States. You have your ills and your social problems in the different communities making up this wonderful Nation, but you do not solve them by appointing congressional committees to investigate local matters; you let each State work its own salvation. And that is all we ask you to let us do. You gave us the power and we will solve our future problems as we have done in the past.

In 1917, by the Jones Act, you gave us the power to elect both houses of our legislature. Since then—and we point at this with a certain pride—we have doubled our governmental activities and our public services. We are serving the public, the very people Senator Iglesias claims to represent. In 1916 the whole budgetary expenditures of our island amounted to some \$6,000,000. This year, for educational purposes alone, we are spending that sum of money.

Who has done this? Who is doing this? Our party, the majority party of the island. Our party is made up, in great numbers, of laboring people. It is not made up solely of rich people, as Mr. Iglesias would like you to believe. If he really represented all

the laboring people, his party should be the majority party of Porto Rico. The majority of our population is composed of laborers, and they look to us and thank us for what we have done for them and for what we are doing for them.

To prove this contention I submit for its insertion in the record the following statement given by a high official of the American Federation of Labor not long ago. The statement follows:

STATEMENT BY EDWARD F. M'GRADY, LEGISLATIVE REPRESENTATIVE, AMERICAN
FEDERATION OF LABOR

I desire to inform the Committee on Insular Affairs of the House of Representatives that the American Federation of Labor gives its whole-hearted support to H. R. 6583, which provides that the people of Porto Rico shall have the right to elect their own governor and vice governor, and it is our sincere wish that this bill will pass the Congress at this session, for we believe that the privilege of choosing their own governor has already been withheld too long. There is no logical reason why the people of Porto Rico should not enjoy this privilege. They are law-abiding and hard-working people. Their leaders are men of great capacity, ability, and intelligence.

It may be said that there is considerable illiteracy on the island, and this is true, but it is fast being overcome, and nowhere even in the United States are the children more eager to learn or more capable of learning than they are in Porto Rico. All of the schools are overcrowded and most of them have the double-enrollment system. At the close of the present year there are about 2,000 rural schools in operation. The number of buildings in which schools are conducted in Porto Rico are 2,322.

In addition to the above there are 1,471 parent-teachers' associations. They also have the University of Porto Rico, which consists of the college of liberal arts, college of law, college of pharmacy, normal school (high-school division), normal school (rural teachers' course), high school, practice school, and college of agriculture and mechanic arts.

The above facts in themselves prove beyond the shadow of doubt that the people of Porto Rico will take their place, as far as learning is concerned, with the States of the Union in a short time.

I do not intend to discuss the industrial situation, but I would like briefly to point out to the committee the many progressive laws that have passed the Porto Rican Legislature within recent years: Law amending the homestead act, the mortgage law, the income tax law, the election and registration law, the civil code, the excise tax law, the banking law, a retirement law for the aged officials and employees of the people of Porto Rico, the appointment of a rural improvements commission, an act creating the puericulture and maternity institute, a general employment agency and labor exchange for the purpose of reducing unemployment, a minimum wage act for working women, an act regulating the employment of women and children, and a law for the protection and for sanitary appliances for working men and women in factories.

The above clearly demonstrates that the chosen representatives of the people have capacity and ability, and that they are keeping abreast with the progressive ideas of the present day. So much so that they should be allowed the privilege of choosing their own governor and vice governor. Trusting them with this responsibility will not only make them more self-reliant, but I believe it will more closely cement the bonds of friendship between these people and the United States.

This act, if passed, will not take effect until the year 1928, so the change will not be sudden. Conditions will not be upset, for by that time the people will have amply prepared themselves for this new order.

In conclusion I want to offer my tribute of respect to the very able, justice-loving American gentleman who is now presiding over the destinies of Porto Rico as its governor, the Hon. Horace M. Towner. He has always stood for the right and has been ever alert and keenly sympathetic for the welfare of the people. Under his administration the people of Porto Rico are assured of an honest and just administration of the law.

As you will readily see, we are placed between radicalism—these friends of ours who would want us to do in one single year a work

that, under the circumstances, will take a long period of endeavor—and ultraconservatism—the few men who still seem to think that Columbus discovered our island, that Spain colonized it, and that the Spanish-American war was fought out simply for the purpose of giving dividends to capital invested. To illustrate present conditions no more appropriate quotation than the following one from the pen of Mr. Henry L. Norton, who, in the January issue of "World's Work," describing Porto Rican affairs, wrote as follows:

* * * Porto Rico has its problems, aside from the economic and social burden of overpopulation. As an American colony, close to our shores, it has offered a tempting field for American capital and enterprise. Millions upon millions of dollars have been invested in the island since 1900. The men who have invested this money in many cases looked for returns much higher than those usually obtainable at home. Is not that what a colony is for? Mercantilism's answer to this question has always been in the affirmative. Their chief interest has been in dividends, not in the people of Porto Rico. Hence there has arisen a conflict of interest, particularly over tax legislation, between the continentals who direct the big business of the island and the Porto Ricans who make its laws.

This conflict bears the seeds of serious trouble. Grave situations have arisen. That the present is a time of comparative quiet is due largely to the vision and tact of Governor Horace M. Towner. For many year Chairman of the House Committee on Insular Affairs, Governor Towner went to Porto Rico with a wide knowledge of its problems and a deep sympathy for its people. Appreciating the value of capital, he has been just to its claims, without any tendency to indulge. If business is not enthusiastic in his support, Governor Towner has won the regard of the Porto Ricans, and if they were to elect a governor to-morrow and he were to run, he would probably be elected.

Placed as we are between these two extremes, we will say to you that no investigation is needed in Porto Rico. The reports from various heads of our executive departments will demonstrate the progress we have attained, a progress that can not be counted by figures, a progress unsurpassed by any other community in the United States.

The CHAIRMAN. I want to ask one question.

Mr. GUERRA-MONDRAGON. Yes.

The CHAIRMAN. I understood Mr. Iglesias to make the statement that at the present time there were 500,000 people starving to death, naked, without homes. Is that so?

Mr. GUERRA-MONDRAGON. If that condition, as described by the distinguished Senator existed, you would have known of it not through Mr. Iglesias; a thing like that would have been already known all over the world.

They are not starving. Of course, they ought to have a better salary; but I say to you, Mr. Chairman and gentlemen of the committee, this, that 25,000 men have got employment that they didn't have a year before, and that the wages they are getting at the present time are higher than they were ever before. I am not holding a brief for the economic conditions that we have inherited from the past.

We have not limited the amount of land that ought to be held by corporations, it is claimed. It is not illegal, to a certain extent, for certain entities—legal persons, not natural ones—to hold and own more than 500 acres of land. Partnerships come under this category. The limitation was placed upon corporations only—

not upon partnerships, and these have got around the law enacted by Congress.

The majority of the land-holding entities are partnerships, a thing that was not covered by the law. All the great, big, land-holding institutions are partnerships; they are not corporations. Congress did not prohibit partnerships from holding any amount of land; so they are legally constituted.

Give us the power to solve our problems instead of you legislating on a subject rather hard to know unless you live down there and study them for years and years. Give us the power to regulate land-holding corporations. You have limited them to 500 acres, but you did not impose any penal sanction. If Congress should give us the power we would solve that problem aright. It is in that resolution. We have asked for it in the resolution that Senator Butler has now before him. One of the things we ask is an amendment to our organic act to enable the legislature to solve this important matter.

The principles of a sales tax have been an old political problem in the island. This tax of ours does not cover necessities of life; so we have not taxed the poor man's table at all. We may have taxed his clothing and his shoes. We think that capital in Porto Rico should bear the largest amount of the tax burden, but we also think that the consumer ought to contribute in proportion to the general expenses of the government. Therefore, we have our property tax, and our income tax, which was modeled after the one you approved in the last session of Congress.

Consumers are generally willing to pay these taxes in exchange for schools, roads, and all the things that mean real progress and civilization.

I was talking not very long ago to a very high official of a country near Porto Rico. We spoke of emigration. That gentleman referred to the convenience and wisdom of having Porto Ricans emigrate to that country. But I said to him, "What will my countryman gain when he leaves our island to go to yours? He will leave behind good roads; he will leave a free public school in every town; he will leave graded schools; he will leave high schools in some 30 cities; he will leave a telegraph system, radio, and a telephone system; he will leave behind a minimum-wage law, and free hospitals." Then that official replied to me: "You people in Porto Rico are too civilized."

Now, I spoke to you yesterday about taxes being tied up in our courts by taxpayers. Of course, they have the right to do so, although I know how disastrous it is to the island to have any large amount of our income tied up in court. I can not but admit that these taxpayers have a right to do so. Recently our courts have started to uphold the validity of our taxes. According to the last report, to official records, monthly income exceeds monthly expenditures.

Mr. Iglesias does not suggest the slightest remedy or cure for the evils he speaks of and which he describes with such black colors. Perhaps he has in his mind a scheme, some pet measure of his. Perhaps he is going to ask for a \$50,000,000 loan from the Congress of the United States for the purpose of buying sugar mills and other purposes. He has not presented a single remedy for the situation.

It is an economical problem. The taxpayers of Porto Rico constitute only 8 per cent of the total population; 92 per cent of the inhabitants do not pay taxes because they have no property. This condition is not political. It is a historical condition. The number of property owners is increasing, however.

Of course, you may say that the wages ought to be higher. The wages will be increased with the price of the article produced. We can not control prices in Porto Rico; we depend on your own American prices. You sometimes have to depend on Europe for fixing your prices.

At the close, Mr. Chairman, I would like to ask the committee for the privilege of inserting reports from heads of departments of our island showing the progress accomplished, as well as an explanation of local conditions. They will show what has been accomplished during the last 10 years in the different lines of endeavor.

Senator BUTLER. Is that an official report?

Mr. GUERRA-MONDRAGON. Yes.

Senator BUTLER. That will be very helpful.

The CHAIRMAN. We will be very glad to insert that.

(The papers referred to are as follows:)

SAN JUAN, April 5, 1926.

STATEMENT RELATIVE TO THE CONDITION OF THE INSULAR TREASURY DURING
THE FISCAL YEAR 1925-26

The treasurer of Porto Rico in his annual report to the governor for the fiscal year 1924-25, dated October 6, 1925, stated as follows:

"PROSPECTS OF THE FINANCIAL FUTURE OF THE INSULAR TREASURY

"Due to the great number of suits filed in the courts during the previous year and the year under review, the actual receipts of the government did not come up to the estimates made; otherwise the budgetary expenditures for the biennial period ended June 30, 1925, would have been more than sufficiently covered.

"Because of said contingency and acting upon the economy plan placed by you before our legislature, the general budget of expenses for the period of 1925-26-27 was reduced by you on September 1, 1925, to an amount below ten and one-half million dollars. With this readjustment the insular treasury has entered into a period of sound economic improvement.

"With a budget not exceeding \$10,500,000; with the income tax act made retroactive to January 1, 1924; and with the new excise tax law providing the very productive 2 per cent sales tax, there will be sufficient revenues to meet not only all of our budgetary requirements for the next two years but there will also be an available cash balance to wipe off our floating indebtedness, perhaps within a period of two years, and to avoid future deficits.

"In short, the reduction of our budget to the present figures and the approval of the new tax laws will restore the financial situation of the insular treasury to normalcy and thus we will be in a better position to hold out through the litigation now pending and such as may hereafter be instituted against said laws." And the prediction has been fulfilled up to this day in so much as all expenses for the ensuing fiscal year have been covered, and not only that, but during the period of time elapsed, that is, during the first nine months of the fiscal year 1925-26, the amount of \$440,000 has been reimbursed to the trust funds, thus reducing the last year's deficit in this amount.

It seems as if the troubles and protests between the taxpayers and the insular government are disappearing, and this is mostly due to the strenuous efforts made by the department of finance to collect and put in force the new tax laws, which functions are being successfully accomplished and many difficulties overcome in the most satisfactory manner.

However, we do not feel so optimistic for the fiscal year 1926-27, due to the unexpected reductions in some of the sources of income, among these, the United States internal revenues, which will compel us to reduce further the government expenses in order to balance them with the income.

JUAN G. GALLARDO,
Treasurer of Porto Rico.

Value of the principal agricultural products exported from Porto Rico (period of 1917-1925, inclusive)

Fiscal year	Sugar	Coffee	Tobacco	Oranges	Pine-apples	Coconuts	Grape-fruits	Total
1917-18.....	\$41,362,229	\$5,505,316	\$16,116,236	\$1,231,551	\$692,712	\$572,600	\$1,120,330	\$66,600,974
1918-19.....	48,132,419	6,065,573	14,867,410	770,203	607,337	757,649	739,106	71,939,697
1919-20.....	98,923,750	9,034,028	25,001,440	833,575	578,633	1,142,412	1,332,742	136,846,580
1920-21.....	72,440,924	5,352,924	21,659,704	447,426	673,887	690,895	2,019,557	103,285,317
1921-22.....	40,784,886	4,316,859	15,306,014	923,912	671,721	478,095	1,100,727	63,582,214
1922-23.....	46,176,202	3,188,002	16,379,467	1,749,378	809,690	567,061	1,863,150	70,732,950
1923-24.....	47,792,602	4,595,811	18,666,756	471,416	974,418	605,129	2,305,298	75,411,436
1924-25.....	53,240,480	6,579,567	17,038,636	838,062	1,199,523	709,853	2,126,399	81,732,520

Department of Agriculture and Labor—General summary of appropriations and personnel

Fiscal year	Number of employees	Salary appropriation	Contingent expenses	Amount appropriated
1917-18.....	42	\$55,740.00	\$20,810.00	\$76,550.00
1918-19.....	57	76,820.00	19,810.00	96,630.00
1919-20.....	90	136,791.00	62,720.00	199,511.00
1920-21.....	90	136,791.00	62,720.00	199,511.00
1921-22.....	141	203,746.50	77,180.00	280,926.50
1922-23.....	141	169,761.75	67,180.00	236,941.75
1923-24.....	176	281,737.00	216,070.00	497,807.00
1924-25.....	176	281,737.00	209,320.00	491,057.00
1925-26.....	153	254,874.00	145,120.00	399,997.00

NOTE.—Savings made in the different appropriations for fiscal year 1924-25, \$53,444.58.

Department of Agriculture and Labor, office of the commissioner—General summary of the appropriations and personnel of said office

Fiscal year	Number of employees	Salary appropriation	Contingent expenses	Total of appropriations
1917-18.....	9	\$14,980.00	\$910.00	\$15,890.00
1918-19.....	9	15,040.00	910.00	15,950.00
1919-20.....	11	18,235.00	1,020.00	19,255.00
1920-21.....	11	18,235.00	1,020.00	19,255.00
1921-22.....	12	21,960.75	1,320.00	23,280.75
1922-23.....	12	19,384.90	1,320.00	20,704.90
1923-24.....	23	42,583.50	12,360.00	54,943.50
1924-25.....	23	42,583.50	9,060.00	51,643.50
1925-26.....	36	66,555.00	16,060.00	82,615.00

Department of Agriculture and Labor, Bureau of Agriculture—General summary of the appropriations and personnel of said bureau

Fiscal year	Number of employees	Salary appropriation	Contingent expenses	Total of appropriations
1917-18	6	\$7,820.00	\$2,000.00	\$9,820.00
1918-19	18	21,820.00	2,000.00	23,820.00
1919-20	25	34,744.00	10,950.00	45,694.00
1920-21	25	34,744.00	10,950.00	45,694.00
1921-22	71	87,421.00	33,060.00	120,481.00
1922-23	71	71,298.25	23,060.00	94,358.25
1923-24	2	4,459.00	24,900.00	29,359.00
1924-25	2	4,459.00	24,900.00	29,359.00

Department of Agriculture and Labor, Bureau of Agricultural development—General summary of the appropriations and personnel of said bureau

Fiscal year	Number of employees	Salary appropriation	Contingent expenses	Total of appropriations
1923-24	67	\$91,162.50	\$110,450.00	\$201,612.50
1924-25	67	91,162.50	107,000.00	198,162.50
1925-26	45	62,028.00	65,000.00	127,028.00

Department of Agriculture and Labor, plant propagation station—General summary of the appropriations and personnel of said plant, fiscal year, 1925-26

Number of employees	2
Salary appropriation	\$2,900
Contingent expenses	4,300
Amount appropriated	7,200

Department of Agriculture and Labor, experiment station—General summary of the appropriations and personnel of said station

Fiscal year	Number of employees	Salary appropriations	Contingent expenses	Total appropriations
1917-18	16	\$20,380.00	\$11,600.00	\$31,980.00
1918-19	19	27,340.00	11,600.00	38,940.00
1919-20	29	52,252.00	38,650.00	90,902.00
1920-21	29	52,252.00	38,650.00	90,902.00
1921-22	26	47,857.00	21,350.00	69,207.00
1922-23	26	40,986.55	21,350.00	62,336.55
1923-24	27	54,762.00	30,450.00	85,212.00
1924-25	27	54,762.00	30,450.00	85,212.00
1925-26	29	58,764.00	28,500.00	87,264.00

Department of Agriculture and Labor, publication office—General summary of the appropriations and personnel of said office

Fiscal year	Number of employees	Salary appropriation	Contingent expenses	Amount appropriated
1923-24	4	\$9,000	\$2,000	\$11,000
1924-25	4	9,000	2,000	11,000

Department of Agriculture and Labor, veterinary services—General summary of the appropriations and personnel of said services, fiscal year, 1925-26

Number of employees 2.

Salary appropriation.....	\$3, 850. 00
Contingent expenses.....	5, 600. 00
Amount appropriated.....	9, 450. 00

Department of Agriculture and Labor, fertilizer, concentrated cattle feed, insecticide and fungicide office—General summary of the appropriations and personnel of said office

Fiscal year	Number of employees	Salary appropriation	Amount appropriated
1923-24.....	5	\$8, 350	\$8, 350
1924-25.....	5	8, 350	8, 350

Department of Agriculture and Labor, plant inspection and quarantine service—General summary of the appropriations and personnel of said service

Fiscal year	Number of employees	Salary appropriation	Amount appropriated
1923-24.....	6	\$5, 925	\$5, 925
1924-25.....	6	5, 925	5, 925

Department of Agriculture and Labor, Division of Forestry—General summary of the appropriations and personnel of said division

Fiscal year	Number of employees	Salary appropriation	Contingent expenses	Amount appropriated
1919-20.....	10	\$13, 100. 00	\$5, 300. 00	\$18, 400. 00
1920-21.....	10	13, 100. 00	5, 300. 00	18, 400. 00
1921-22.....	14	19, 415. 00	10, 150. 00	29, 565. 00
1922-23.....	14	15, 969. 30	10, 150. 00	26, 119. 30
1923-24.....	16	20, 795. 00	17, 910. 00	38, 705. 00
1924-25.....	16	20, 795. 00	17, 910. 00	38, 705. 00
1925-26.....	16	20, 750. 00	15, 410. 00	36, 160. 00

Department of Agriculture and Labor, Bureau of Labor—General summary of the appropriations and personnel of said bureau

Fiscal year	Number of employees	Salary appropriations	Contingent expenses	Total appropriations
1917-18.....	11	\$12, 560. 00	\$6, 300. 00	\$18, 860. 00
1918-19.....	11	12, 620. 00	5, 300. 00	17, 920. 00
1919-20.....	15	18, 460. 00	6, 800. 00	25, 260. 00
1920-21.....	15	18, 460. 00	6, 800. 00	25, 260. 00
1921-22.....	18	27, 092. 75	11, 300. 00	38, 392. 75
1922-23.....	18	22, 122. 75	11, 300. 00	33, 422. 75
1923-24.....	26	44, 700. 00	18, 000. 00	62, 700. 00
1924-25.....	26	44, 700. 00	18, 000. 00	62, 700. 00
1925-26.....	23	40, 000. 00	10, 250. 00	50, 250. 00

*Department of Agriculture and Labor, development of the Bureau of Labor—
Labor legislation*

Title	Date of enactment	Purpose of the law
An act to establish a bureau of labor, and for other purposes. ¹	Mar. 14, 1912	To promote the welfare of laborers.
An act regulating the work of women and children, and protecting them against dangerous occupations. ²	Mar. 13, 1913	To protect women and children.
An act to provide for the construction of scaffolds, the protection of the public, and for other purposes. ³	.....do.....	To protect the life of laborer.
An act to amend section 553 of the Penal Code of Porto Rico. ⁴	Aug. 9, 1913	To protect the health of the workers.
An act to regulate the hours of labor on public works, and for other purposes.	Aug. 19, 1913	Do.
An act providing for the sale to laborers of certain lands of the people of Porto Rico, and for other purposes.	Mar. 11, 1915	To promote the welfare of laborers.
An act providing for the relief of such workmen as may be injured, or of the dependent families of those who may lose their lives while engaged in trades or occupations, and for other purposes. ⁵	Apr. 13, 1916	To insure the life of workmen.
An act to amend section 470 of the Penal Code of Porto Rico.	Apr. 13, 1916	To safeguard the rights of workmen.
An act to determine certain duties of employers in case of strikes.	Apr. 12, 1917	Do.
An act regulating the load or weight that laborers may carry, and for other purposes. ⁶	.....do.....	To protect the health of workers.
An act to determine the procedure in cases of claims for wages by farm laborers against their employers. ⁷	Nov. 14, 1917	To safeguard the rights of workmen.
An act to amend sections 1487, 1488, 1489, and 1490 of the Revised Civil Code of Porto Rico.	.....do.....	Do.
An act to authorize the issuing of bonds for the purpose of constructing houses for artisans and laborers, provide for the leasing of the same, with a certain right to the ownership thereof, improve the sanitary conditions of certain lands of the people of Porto Rico, promote the creation of farms to be leased to farm laborers and to grant them title thereto, and for other purposes.	Nov. 27, 1917	To promote the welfare of laborers.
An act to provide for a dispensary and minor surgeon in sugar factories, workshops, electric and hydraulic plants, and for other purposes.	Nov. 30, 1917	To protect the life of workmen.
An act to protect laborers in their right to be members of labor organizations.	.....do.....	To protect the rights of workmen.
An act to promote the welfare of the inhabitants of Porto Rico in regard to accidents causing death or injuries to workmen while engaged in their work; establishing the duty of employers to compensate their employees or heirs, as defined in this act, for injuries or death irrespective of negligence, and to provide ways and means for the enforcement of this duty; creating an insurance fund to secure employers against such liability and providing for the management and such insurance; creating a workmen's relief commission and determining its power and duties; establishing the liability of the people of Porto Rico with regard to their laborers for injuries or death or such laborers in works performed by administration, and for other purposes. ⁸	Feb. 25, 1918	To promote the welfare of workmen and their dependents in cases of accidents.
An act of labor contracts.....	Mar. 31, 1919	To protect the rights of laborers.
An act to regulate emigration from Porto Rico, and for other purposes.	May 29, 1919	To promote the welfare of workmen.
An act to prevent, and aid in the settlement of, strikes and lockouts.	June 3, 1919	Do.
An act providing that in making purchases of furniture, articles and supplies for the departments and offices of the insular government, as well as for municipalities, school boards or any other public body, preference shall be given to furniture, articles and supplies manufactured or produced in the country, and further providing that notice shall be given certain manufacturers of such articles, and for other purposes.	.....do.....	To protect the native industries.
An act establishing minimum wages for working women, and for other purposes. ⁹	June 9, 1919	To promote the welfare of working women.

¹ Amended on Mar. 13, 1913 and repealed by act "Reorganizing the bureau of labor," approved July 15, 1921.

² Amended on Aug. 19, 1913 and on June 21, 1918.

³ Amended on Dec. 1, 1917 and on July 7, 1923.

⁴ Amended on Nov. 23, 1917, on Feb. 18, 1918, and on May 20, 1925.

⁵ Repealed by act approved on Feb. 25, 1918 (workmen compensation act).

⁶ Amended on Feb. 21, 1918.

⁷ Secs. 1 and 1-a amended by act No. 12 of July, 1923.

⁸ Amended on June 19, 1918, May 6, 1920, July 14, 1921, and Sept. 1, 1925.

⁹ Declared unconstitutional and void in virtue of a decision by the Supreme Court in Feb. 25, 1924.

*Department of Agriculture and Labor, development of the Bureau of Labor—
Labor legislation—Continued*

Title	Date of enactment	Purpose of the law
An act to authorize the issuing of bonds for the purpose of urbanizing certain lands belonging to the people of Porto Rico in the municipality of San Juan, for the purchase of more land if necessary, for the construction thereon of sewerage, water works and lighting systems, for the paving of streets and for the building of houses for artisans and laborers, and for other purposes.	May 13, 1920	To promote the welfare of laborers.
An act appropriating the sum of \$125,000 to carry out the construction of additional houses in the Barrio Obrero at Martin Peña, of the city of San Juan, to furnish temporary shelter to the inhabitants of the barrios "Salspuedes" and "Hoyofrio" of said city, and for other purposes.	Apr. 11, 1921	To provide homes for laborers.
An act establishing special proceedings in the municipal courts of Porto Rico, and for other purposes.	Apr. 29, 1921	To protect the rights of workmen.
An act to create a homestead commission; to authorize the construction of houses for artisans and laborers with funds of the people of Porto Rico; provide for the leasing of the same, with a right to the ownership thereof; to improve the conditions of such lands of the people of Porto Rico as may be selected for the construction of said houses and for the formation of farms; promote the creation of farms to be leased to farm laborers and to grant them title thereto, and for other purposes.	July 11, 1921	To provide for the welfare of workmen.
An act to regulate the employment of minors and to provide for compulsory school attendance of children in Porto Rico, and for other purposes. ¹⁰	July 20, 1921	To protect children.
An act to compel employers to fulfill certain duties and to protect laborers in their homes.	July 26, 1921	To protect the health of workmen.
An act prescribing minimum wages to be paid the laborers and workmen of Porto Rico in insular and municipal works. ¹¹	June 30, 1923	To improve the economic conditions of laborers.
An act to regulate the operation and handling of cinematograph machines, and for other purposes.	July 3, 1923	To protect the life of workmen.
An act creating a general employment agency of the people of Porto Rico to be under the direction of the department of agriculture and labor, and for other purposes.	July 14, 1923	To seek employment for unemployed laborers.
An act to authorize the commissioner of the interior to sell to poor families the mangrove lands situated in the southern portion of the town of Cataño between the road leading to San Juan and the first culvert on the road leading to Bayamon, and for other purposes.	July 18, 1923	To promote the welfare of laborers.

¹⁰ Amended on July 31, 1925.¹¹ Amended on July 23, 1925.

Memorandum in re total enrollment in the public schools of Porto Rico during the past 10 years, and total expenditures from insular and municipal funds

Total enrollment, 1915-16-----	151, 568
Expenditures:	
From insular funds-----	\$1, 348, 306. 00
From municipal funds-----	491, 710. 00
Total-----	<u>1, 840, 016. 00</u>
Total enrollment, 1916-17-----	152, 063
Expenditures:	
From insular funds-----	\$1, 518, 321. 68
From municipal funds-----	588, 067. 50
Total-----	<u>2, 106, 389. 18</u>
Total enrollment, 1917-18-----	142, 846
Expenditures:	
From insular funds-----	\$1, 594, 855. 43
From municipal funds-----	730, 947. 00
Total-----	<u>2, 325, 802. 43</u>

Total enrollment, 1918-19	160,794
Expenditures:	
From insular funds	\$1,626,039.23
From municipal funds	679,431.50
Total	2,305,470.73
Total enrollment, 1919-20	184,991
Expenditures:	
From insular funds	\$2,275,434.23
From municipal funds	686,443.15
Total	2,961,877.38
Total enrollment, 1920-21	193,269
Expenditures:	
From insular funds	\$2,929,944.14
From municipal funds	906,689.18
Total	3,836,633.32
Total enrollment, 1921-22	226,171
Expenditures:	
From insular funds	\$3,729,991.93
From municipal funds	1,161,487.80
Total	4,891,479.73
Total enrollment, 1922-23	225,600
Expenditures:	
From insular funds	\$3,358,319.74
From municipal funds	1,569,896.15
Total	4,928,215.89
Total enrollment, 1923-24	227,267
Expenditures:	
From insular funds	\$4,580,516.25
From municipal funds	2,080,769.15
Total	6,661,285.40
Total enrollment, 1924-25	230,120
Expenditures:	
From insular funds	\$4,652,779.53
From municipal funds	2,163,179.39
Total	6,815,958.92

A substantial increase appears in the budgets corresponding to the fiscal years 1923-24 and 1924-25, and apparently the increase in the enrollment for those years as compared to that of previous years does not justify the difference in the total expenses. Such an increase was chiefly due to the fact that the double enrollment plan in 300 rural schools was eliminated, said school being converted into consolidated rural schools in single enrollment, in charge of English graded teachers. This organization has proven of great benefit to the rural school work and at the same time it has contributed to help the functioning of the urban schools, since many of the children of the rural zone continue their studies in the urban schools after reaching the higher grade of instruction offered in their respective localities.

Mr. GUERRA-MONDRAGON. Now, Mr. Chairman and gentlemen of the committee, there is another thing that I would like to talk to you about, just to finish my remarks, with your kind indulgence, and that is the Davila bill, House bill 11610.

The CHAIRMAN. That is not officially here, but you may discuss it. Do you understand, Senator Butler?

Senator BUTLER. No.

The CHAIRMAN. It is a House bill and so it is not officially before us, but you may express your views on it.

Mr. GUERRA-MONDRAGON. A public service commission was created in 1917 in the organic act. It was composed of the heads of departments plus two elective members, making a total of nine men. These heads of departments are men with not very much time at their disposal, not only because they have to attend to the regular activities of their respective departments, but because they belong to boards created by the legislature. So, sometimes, it is very difficult to get a quorum in the membership of the commission not because of any lack of sense of duty, but because they have to look after too many things, because they haven't the time. They have official meetings of these various boards almost every day.

Our idea is to have a commission composed of five members—one the presiding officer, to be appointed by the governor of Porto Rico, by and with the consent of our senate, who shall preside over the commission, and two more associate members, the two present elective members to continue in office for the remainder of their term. The commission shall devote their whole time to the decision of these important matters as are presented to them.

There is another very important amendment that we would like to make to the organic act. The organic act as a section to regulate the operation, rates, and service of all public carriers, but it refers solely to carriers by rail, and we desire to extend that same provision to all carriers whether by rail or otherwise.

That is all, gentlemen. I thank the committee for your kind attention.

Senator BUTLER. May I ask the gentleman a question?

The CHAIRMAN. Certainly, Senator Butler.

Senator BUTLER. Referring to this report, which you may be familiar with, on page 4: Have you a copy of it? I want to ask with reference to a paragraph here which has to do with the issuing of bonds and obligations, simply to clear up something in my mind. Perhaps I had better read it.

Mr. GUERRA-MONDRAGON. With pleasure, Senator Butler. This measure has been before the Legislature of Porto Rico for the last five or six years. The members from the districts where these irrigation projects are located are asking that in computing the indebtedness of the people of Porto Rico irrigation bonds be excluded. The reason is this: The income from these irrigation districts is immense. It is a perfect system, paid for by the taxpayers. They do not have their own officers; they have the insular government, the central government, managing the whole thing. The treasurer of Porto Rico yearly gets an estimate from the chief engineer of the irrigation system as to the capital to be amortized and the interest to be paid. Then the treasurer divides that amount among the 40,000 or 50,000 acres within the irrigation district so that each acre will have to pay just enough to cover the bare cost of maintaining the plant, plus capital and interest.

These irrigation districts have their own revenue, which they gladly pay, because when they did not have irrigation they used vast pumps

to bring up the water, sometimes subterranean waters. They would spend on an average of \$25 or \$30 an acre to irrigate, and very poorly at that. Now, they have their water in these great big reservoirs, and they get it scientifically. So they are very glad to pay their taxes, because this system multiplies by three the production of sugar cane.

Senator BUTLER. There was a statement made here that there is a limitation to the amount of the bonds which may be issued by the government.

Mr. GUERRA-MONDRAGON. That is 10 per cent of the total value of our property.

Senator BUTLER. Do I understand that another 10 per cent may be issued if it is secured by the obligation of the municipalities?

Mr. GUERRA-MONDRAGON. Yes, indeed. That is the state of affairs to-day.

Senator BUTLER. So the central government can not at any time be required to issue bonds in excess of 20 per cent?

Mr. GUERRA-MONDRAGON. Of 10 per cent, you mean?

Senator BUTLER. Ten per cent of its own bonds and 10 per cent of the bonds represented by the municipalities.

Mr. GUERRA-MONDRAGON. Certainly.

Senator BUTLER. That is the extent?

Mr. GUERRA-MONDRAGON. That is the law to-day.

Senator BUTLER. How much does that involve to-day?

Mr. GUERRA-MONDRAGON. That involves \$23,000,000.

Senator HARRIS. Is that on the municipalities?

Mr. GUERRA-MONDRAGON. No; the indebtedness of the insular government. That of the municipalities is something like—

Governor TOWNER. I think it is about \$16,000,000.

Mr. GUERRA-MONDRAGON. All of that is in schools, roads, bridges, etc.

Senator HARRIS. What is the value of the property of the municipalities as compared with the property in the whole island?

Mr. GUERRA-MONDRAGON. The whole island is about \$315,000,000, not counting the value of public works.

Senator HARRIS. What part of that is in the municipalities?

Mr. GUERRA-MONDRAGON. About seventeen million; twenty-three million is owned by the insular government. There are six million for the irrigation system of the south. There is also about three million more for another project for irrigation.

SENATOR BUTLER. Wasn't this long paragraph that I read introduced as an amendment to the existing law?

Mr. GUERRA-MONDRAGON. Yes, sir.

Senator BUTLER. And it doesn't apply now, this amendment that I read?

Mr. GUERRA-MONDRAGON. No.

Senator BUTLER. The assessment which has already been made has been made under existing laws?

Mr. GUERRA-MONDRAGON. Yes, sir.

Senator BUTLER. This involves some amendment to the existing law. Now, what do the amendments provide for?

Mr. GUERRA-MONDRAGON. The only difference between the section as read by the Senator and the existing law is that the amendment clarifies the existing law.

Senator BUTLER. That is, there has been some question as to the present issue?

Mr. GUERRA-MONDRAGON. Yes, sir.

Senator BUTLER. And this is intended to clarify it?

Mr. GUERRA-MONDRAGON. Yes; to clarify it, because the present law says positively in express, clear terms that in computing the insular indebtedness the debts of the municipalities are not to be counted: but this clarifies it in such a way as to leave no room for doubt. The only real innovation introduced is to add to the present law the feature about the irrigation bonds.

Senator BUTLER. Do I understand that in the operation of this section that you have recommended or suggested the municipalities themselves would negotiate any of their own bonds, or obligations or would they place them in the hands of the central government?

Mr. GUERRA-MONDRAGON. And through the War Department.

Senator BUTLER. And the government negotiates the bonds?

Mr. GUERRA-MONDRAGON. Yes.

Senator BUTLER. And returns the proceeds to the municipalities. Is that the operation?

Mr. GUERRA-MONDRAGON. Yes.

Governor TOWNER. Just one moment, if the Senator will allow me. The difficulty has arisen, Senator, about that very proposition—that of creating two sets of obligations for one bond. In effect, the insular government is only guaranteeing the bonds for the municipalities. Of course only to the extent of less than 10 per cent of the indebtedness of the municipalities. Now, it was thought best that in order to solve the difficulties we should issue two sets of bonds for one debt, that the municipality should issue its bond and then upon their approval by the insular government, be taken up by the insular government and that the insular government would pledge its faith and credit for the payment of those bonds, so that there will be only one issue of bonds.

Senator BUTLER. That is, to guarantee them?

Governor TOWNER. Just to guarantee them.

Senator BUTLER. That is what I wanted to clear up.

Governor TOWNER. Let me say this: That is not very important, as the Attorney General of the United States time and time again has stated that this was a perfectly legal and proper thing to do. It amounted to the same thing as the language of the organic act. It says:

In computing the indebtedness of the people of Porto Rico bonds issued by the people of Porto Rico secured by bonds of municipalities or school boards of Porto Rico, shall not be counted.

If you have the slightest doubt about the wisdom of it—let me say that it is just merely to clarify that proposition.

Mr. GUERRA-MONDRAGON. We have found that on account of this doubt as to whether these bonds should be issued through the agency of the insular government that condition caused the market in New York to be a little dull; so if you clarify this language it will be much better for the bond holders.

Senator HARRIS. You can sell them at a lower rate of interest if you clarify the language?

Mr. GUERRA-MONDRAGON. Certainly. In the past we have sold bonds, Senator Harris, at the same rate of interest as United States bonds and got better premiums on them.

Governor TOWNER. Just a couple of months ago there were sold bonds of Porto Rico amounting to two and a half million dollars. They sold under these provisions that have been spoken about and brought in between 3 and 4 per cent premium.

Senator HARRIS. Have you issued bonds up to the total amount that you can under the law, both of the municipalities and insular government?

Mr. GUERRA-MONDRAGON. No, sir. We have an ample margin, a very ample margin left.

The CHAIRMAN. Is there any other question?

Senator BUTLER. In the statements which you are going to file for the record is there included a statement of finances outlining the number of bonds that have been issued?

Mr. GUERRA-MONDRAGON. Yes, sir.

The CHAIRMAN. A telegram has just come to me from Mr. Martinez Nadal, of San Juan. I shall have it inserted in the record.

(The telegram referred to is as follows:)

APRIL 28, 1926.

Regular Republican party, representing 35,000 voters, oppose legislation favoring landlordism and absenteeism which is responsible for present disastrous economical conditions island. Party favors and requests congressional investigation of economic social and political situation prior to amending organic act so that Congress may act accordingly. We also oppose any amendment organic act tending to limit right of appeal to our supreme court against decisions insular auditor. Legislative commission at Washington represents only Unionist party and split Republicans composing the so-called Alliance party patronized by insular administration and controlling island by reason of fraudulent election aided by local election law that is undemocratic, tyrannical, oppressive, and prevents free suffrage of the people.

MARTINEZ NADAL, *Chairman*.

The CHAIRMAN. It is the understanding of the Chair that this completes the hearing upon the Porto Rican matters.

Governor TOWNER. There is a man here who represents the Farmers' Association of Porto Rico. I wonder if he might use five minutes now.

The CHAIRMAN. We can sit here until 12 o'clock. We will have to go then. If he can utilize five minutes, he is welcome to it.

STATEMENT OF ENRIQUE LANDRON, REPRESENTING THE FARMERS' ASSOCIATION OF PORTO RICO

Mr. LANDRON. Mr. Chairman, I want to state that I represent the General Farmers' Association of Porto Rico here, which is composed of sugar producers. I just want to make a few remarks about the efforts that taxpayers there are making to keep out of such conditions as these. We are only producing over there about \$58 per capita. Out of that we are paying about \$9 per capita taxes. In other words, our total income there is about \$75,000,000 for 1,400,000 people. If you compare this figure with the United States for the national income per capita—\$560—you will find that the Porto

Rican figure is higher relating it to the national wealth. Ours is only \$240 per capita. That shows that whatever is said about our budget being low is said without taking into consideration these figures. The ratio of our public expenditures to wealth is about 21½ per cent more than in the United States. That is, we are paying 24 per cent of our national income into the treasury for public expenditures, while in the States it is only a little over 11 per cent. That shows that instead of trying to increase our public budget there, or our public debt, our legislation ought to tend to lower it. In fact, I believe if we had a little more efficient administration, practically all the services can be rendered for less money.

I won't take any more of your time.

The CHAIRMAN. What legislation are you recommending, then? This committee is trying to legislate properly. What recommendation have you to make to it?

Mr. LANDRON. In this matter, that the limit for our borrowing capacity—something should be done to determine really what should be our borrowing capacity, because when you say 10 per cent of the assessed valuation of the island, it doesn't limit the borrowing capacity, because that valuation can be raised.

Senator BUTLER. That is the very point.

Mr. LANDRON. We have now, for instance, \$315,000,000, but if the property is reassessed it can be made \$500,000,000. Then our borrowing capacity will go up to \$50,000,000.

The CHAIRMAN. What you want, then, is legislation that more closely restricts the borrowing capacity of the insular government?

Mr. LANDRON. Legislation that will so relate to our income or to our general budget or something like that that will not be so liable to be increased at the will of somebody there.

The CHAIRMAN. All right. Is there anything further?

Mr. LANDRON. If any of my time is left—

The CHAIRMAN. Your time is gone. If you want to file anything or if these gentlemen desire to file with the committee any further statements, we will be glad to have them. You have traveled a good way and if any of you want to make a brief personal statement we will be glad to hear you if you wait until the hearing on the Virgin Islands is over. If you gentlemen desire to wait, we will hear you Friday at 10.30.

Thereupon, at 12 o'clock noon, the committee adjourned until Friday, April 30, 1926, at 10.30 o'clock a. m.)

AUDITOR FOR PORTO RICO AND THE PHILIPPINE ISLANDS

FRIDAY, APRIL 30, 1926

UNITED STATES SENATE,
COMMITTEE ON TERRITORIES AND INSULAR POSSESSIONS,
Washington, D. C.

The committee met, pursuant to adjournment, at 10.30 a. m., in the committee room, Capitol, Senator Frank B. Willis presiding.

Present: Senators Willis (chairman), Bayard, Butler, Harris, and Nye.

The CHAIRMAN. The committee will be in order.

Mr. GUERRA-MONDRAGON. I just want to ask that in case the Farmers' Association of Porto Rico desires to present an original statement, we be allowed an opportunity to answer it in case we think it necessary to answer it.

The CHAIRMAN. That is all right. You have that privilege.

Mr. GUERRA-MONDRAGON. Dealing with taxation matters in the island.

The CHAIRMAN. If you desire to file any additional statements we would like to have them because we are going to have these hearings printed.

Mr. GUERRA-MONDRAGON. Yes, sir.

The CHAIRMAN. Then, this concludes the hearings upon these various Porto Rican and Philippine measures and upon the Virgin Islands question. The committee will take all these matters under advisement. We hope to make some report on them.

(Whereupon, at 12 o'clock noon, the committee adjourned.)

REPORT FOR THE YEAR 1930 AND THE BUILT PILE ISLANDS

WEDNESDAY, APRIL 10, 1930

The following is a report of the work done during the year 1930, and the built pile islands. The work was done by the United States Fish Commission, and the results are as follows:

The first part of the report is a general statement of the work done during the year. The second part is a detailed account of the work done on the built pile islands. The third part is a summary of the results of the work.

The work done during the year 1930 was of a general nature, and consisted of the following:

1. The collection of specimens of the built pile islands.

2. The examination of the specimens of the built pile islands.

3. The preparation of a report on the work done during the year.

The results of the work done during the year 1930 are as follows:

1. The collection of specimens of the built pile islands.

2. The examination of the specimens of the built pile islands.

3. The preparation of a report on the work done during the year.

AUDITOR FOR PORTO RICO AND THE PHILIPPINE ISLANDS

THURSDAY, MAY 13, 1926

UNITED STATES SENATE,
COMMITTEE ON TERRITORIES AND INSULAR POSSESSIONS,
Washington, D. C.

The committee met, pursuant to call, at 10.30 o'clock a. m., in the committee room, Capitol, Senator Frank B. Willis presiding.

Present: Senators Willis (chairman), Bingham, Nye, Harris, Bayard, and Bratton.

The CHAIRMAN. The committee will come to order. It was thought that we had closed our hearings definitely and finally, but subsequent to the last meeting representatives of the Philippine delegation came to me and asked permission for Dr. Jose S. Reyes to be heard briefly on the Philippine auditor's bill, and the committee felt they wanted to give everybody their day in court. So I promised them a brief hearing this morning. We hope the speaker will hold himself to the lowest possible limit, because we have several bills which we want to dispose of this morning.

Therefore, at this time we will hear Dr. Jose S. Reyes of the Philippine delegation relative to the Philippine auditor's bill.

STATEMENT OF JOSE S. REYES ON BEHALF OF PHILIPPINE DELEGATION

Mr. REYES. Mr. Chairman and members of the committee, for the assurance of the committee members, I wish to say that we intend this to be the last of our testimony. We are sincerely convinced that this bill contains very important provisions; it contains provisions that will alter and modify very radically existing laws regarding the auditor's office in the Philippines.

I intend this morning to examine the reasons that have been advanced in favor of enacting this particular piece of legislation.

As far as one can gather, the reasons for the pending bill may be summarized as follows:

As a result of decisions of the Philippine Supreme Court in two cases, the Ynchausti and the Metropolitan water district cases, the the insular auditor has been deprived of powers which undoubtedly belong to his office.

I might remark in passing that if the members of the committee desire to interrupt me with questions for information, it will be perfectly agreeable to me.

Second, these decisions of the Philippine Supreme Court are at variance with decisions made by the Federal Courts in the United States.

Third, that the decisions, especially in the Ynchausti case, are in conflict with a previous decision of the court in an analogous case, that of *Lamb v. Phipps*.

Fourth, that in issuing a mandamus against the auditor, the court took a step unprecedented either in the Philippines or in the United States.

Fifth, that regardless of these question of law, it is desirable to establish in the Philippines an accounting office with such powers as are provided in this bill and a system of deciding claims against the government such as is found in its provisions because:

First, while the bill does not increase the powers of the auditor, it serves to clarify them.

Second, the bill would safeguard the Philippine treasury.

Third, the bill would place the auditor on the same level as the Comptroller General of the United States and would give to the Philippines a system the same as that in the United States.

Let us examine these points one by one.

First, the Ynchausti and the Metropolitan water district cases.

The Ynchausti case arose out of the claim filed last year by the Ynchausti Co., a commercial partnership, for the refund of customs duties paid under protest on the repairs done to one of its steamers at Hongkong, a foreign port. The insular collector of customs, after a hearing, granted the claim and signed a warrant for the refund of the duty paid under protest. This action of the collector was based on paragraph 348 of section 11 of the Philippine tariff law passed by the Congress of the United States in 1909 authorizing the admission free of duty to the Philippines of vessels repaired in foreign countries "upon proof satisfactory to the collector of customs that adequate facilities for such repairs are not afforded in the Philippine Islands." This discretionary authority of the collector of customs was broadened further by Act 2872 of the Philippine Legislature enacted in 1919, under the authority of section 10 of the organic law of 1916, and approved by the President of the United States, which provided that vessels repaired in foreign ports should be admitted free of duty—

upon proof satisfactory to the collector of customs that adequate facilities are not afforded in the Philippine Islands for such repairs, so that the work can not be done there reasonably, economically, and within reasonable time in the judgment of said collector * * *.

Two other sets of legal provisions are worth noting at this point. The Philippine Legislature by Act 2711, known as the Administrative Code, and passed in 1917, provided in sections 1383-1386 for a review by the court of first instance of the city of Manila of the decisions of the collector of customs in cases involving the refund of money erroneously or illegally collected at the instance either of the protesting party or the secretary of finance of the Philippine government. The Philippine Commission, by Act 357, passed in 1902, as amended by Act 1515, passed in 1906, made a permanent annual appropriation to cover, among other subjects, refunds of customs duties erroneously received.

On the part of the insular auditor it was contended that the decision of the collector of customs was not final and conclusive upon him; that under section 24 of the organic act of 1916 he is given authority to "examine, audit, and settle all accounts pertaining to the revenues and receipts * * * of the Philippine government"; that his administrative jurisdiction over accounts is exclusive; that his decisions are final and conclusive upon the executive departments; and that, moreover, the aggrieved party had another "plain, speedy, and adequate remedy" by the administrative appeal authorized in the organic law. Acting upon these grounds the insular auditor failed to countersign the warrant for the refund of the duties paid under protest and the case was left to the court for adjudication.

This recital of facts and of the arguments relied upon by both sides is sufficient for any impartial mind to be convinced that the position of the insular auditor in this particular case is by no means as unassailably correct as the testimony presented in favor of the bill would seem to indicate or as the passage of this bill at this time would necessarily imply. And it is worth noting at this point that Mr. O. R. McGuire, who has testified in favor of this bill, wrote in the *Illinois Law Review*, volume 20, page 462, for January, 1925, as follows:

* * * while the United States could not be sued. * * * in customs cases, it was held that there was a common-law remedy against the collector for refund of duties illegally collected provided the importer notified the collector of his intention to sue and not to pay the money into the General Treasury. (*Elliot v. Swartout*, 1836, 10 Peters, 137.)

The judgment of the Philippine Supreme Court in this case, which is after all a matter of but minor importance compared with the larger problems connected with the Philippines and in which it is just as reasonable to assume that a single individual is as liable to be mistaken in the interpretation of the extent of his own authority under the law as six learned members of the highest court in the Philippines are, was productive of very astounding results.

It was published broadcast in the newspapers that American control in the Philippines had received a "sharp setback," this from the Transcript of Boston, Mass., September 23, 1925; that the "Filipino politicians" were "jubilant over the prospect of fine pork and plenty of it," which expression is from the Post of New York City, September 25, 1925; that General Wood's work of rehabilitating the islands was "endangered"; from the Public Ledger of Philadelphia, September 23, 1925; and that a crisis resulting possibly in bankruptcy was likely to happen, if the decision was not reversed, and this was from the Post, of Covington, Ky., September 25, 1925.

These are samples of news items and editorials carried in many papers throughout the United States. On the second page of the United States Daily for May 11, 1926, under the heading "War Department favors bill to aid Philippine finances," the following report was made of the testimony of Major Hedrick before the House Committee on Insular Affairs [reading]:

Maj. Lawrence H. Hedrick, of The Judge Advocate General's office, who is in charge for the War Department of two suits pending in the Supreme Court of the United States, said that these suits had revealed how complicated a situation has grown up in the last few years. The Philippine Supreme Court,

he said, had in effect held the present accounting laws of the islands invalid, and this legislation is needed in order to assure the orderly conducting of the government.

Who are these persons who by their decision in the Ynchausti case, according to the American press, had struck a blow at American prestige and authority, paved the way for unlimited "pork," endangered General Wood's efforts to rehabilitate the Philippines, brought on a crisis likely to result in bankruptcy for the Philippine Government, and nullified the accounting laws of the islands, thereby making impossible the orderly conducting of the government? They are members of the Philippine Supreme Court, appointed for life by the President of the United States with the consent of the American Senate. Of the nine members of the court, five are Americans and four Filipinos. Of the eight justices who sat in the Ynchausti case, six decided against the contention of the auditor and two sustained him. Of the six justices who signed the majority decision, three are Americans and the other three Filipinos. The decision itself was written by an American, Mr. Justice Johns.

And what of the effect of the decision on the government of the Philippine Islands and its finances? In a signed dispatch published in the New York Herald-Tribune of September 25, 1925, Col. R. A. Duckworth-Ford, one of the assistants to the Governor General, wrote [reading]:

The ruling of the Supreme Court of the Philippines * * * on being further studied to-day was found to bear on the particular case in question, from the equity standpoint, rather than on the general matter of jurisdiction. * * * The alarm first felt has, therefore, been allayed * * *.

In view of the arguments which have been presented in favor of this bill, apparently the peace of mind found among some members of the staff of the governor general did not spread to the insular auditor of the Philippines. For, as was developed in the testimony of Major Hedrick before the House Committee on Insular Affairs, the idea of presenting the present law originated with the insular auditor himself. And it must not be overlooked—and this is said with the greatest respect and with no thought of criticism—that the two experts, one of whom admitted that he drafted the bill, who have testified in favor of the measure before the committees of the House and Senate are the counsel for the auditor in the two cases pending before the Supreme Court of the United States.

With regard to the charge that after the decision in the Ynchausti case, raids on the public treasury would be in order and financial bankruptcy would be in sight, it is sufficient to say that to-day, about eight months after the Philippine Supreme Court handed down its decision, no case that we know of similar to this one has been filed in Philippine courts. And the auditor himself in making his report for the fiscal year 1925 disclosed a surplus for the year itself larger than in previous years.

I shall turn now to the other case, the Metropolitan Water District case. This case, being different from the Ynchausti case and not as important from the point of view of its relevancy to the pending bill, does not need any lengthy discussion. It will be taken up here only to show that in this instance as in others on the questions of law involved, the possibility of mistake on one side is just as great as it is on the other. It arose out of a dispute over an account be-

tween the city of Manila, a municipal corporation, and the Metropolitan Water District, a public corporation, created by the Philippine Legislature by act 2832 as amended by act 3109, to supply water to the city of Manila and neighboring municipalities. The waterworks system, previously owned and operated by the city of Manila, was transferred to the Metropolitan Water District by the above-mentioned acts of the Philippine Legislature. The city claimed exemption from the payment of the water which it used for certain purposes, on the ground that, as owner of the waterworks system previously, it did not have to pay for water used for such purposes. The disputed account was brought to the attention of the auditor who decided in favor of the Metropolitan Water District. In order to enforce his decision, the auditor ordered the collector of internal revenue to withhold the share of the internal revenue taxes which had been collected and which was allotted, by law, to the city of Manila. Further, he drew a warrant on these funds, in the absence of any appropriation authorized by the municipal board of the city of Manila, payable to the Metropolitan District as payment or part payment on the account in dispute.

There is no need to outline here the laws and arguments relied on by both sides. In passing upon the question of the soundness of the legal principles upheld by the Philippine Supreme Court and without pronouncing judgment as to the accuracy of their application in this particular instance, it is sufficient to notice the grounds upon which the decision is based.

The decision of the court said, in part, as follows:

In the final analysis we have this situation. An attempt was made to take money out of the government treasury, which belongs to the city of Manila, a municipal corporation, and apply it to the payment of a debt which a public corporation claims to have against the city. That proceeding was in conflict with three of the express provisions of the section 3 of the Jones law.

First, it violates that portion of the section which says that no law shall be enacted "which shall deprive any person of life, liberty, or property without due process of law."

Second, it violates that portion of the section which says: "That no money shall be paid out of the treasury except in pursuance of an appropriation by law."

The CHAIRMAN. Will you permit an interruption there?

Mr. REYES. Certainly.

The CHAIRMAN. Here is the point that is troubling me and I think is a matter of some difficulty in the minds of the committee: Either in respect of this case or the other case, undoubtedly here was an act of the legislative body. But the theory of the accounting system of the United States is that there must be reposed in somebody final authority to settle and determine these accounts. Now, then, if a person that is aggrieved by the decisions of the head of a department can go into court and get a mandamus to compel the payment of money, is it not perfectly apparent that in effect as this case stands unreversed or the law is not changed, this decision of the Supreme Court of the Philippines makes it possible for the Philippine government to be sued against its will by anybody who wants to sue it. Is not that the effect of it?

Mr. REYES. Mr. Chairman, I imagine that you are referring to the Ynchausti case rather than the case of the Metropolitan Water District?

The CHAIRMAN. Yes. As I get it, that is really the point?

Mr. REYES. Yes. As I shall later state in my testimony—I may anticipate it now—the brief filed on behalf of the insular auditor himself before the Supreme Court of the United States admits that in this particular case—of course, the committee, I suppose, is fully informed of that in this case—in the following language [reading]:

The major question in the case is whether the duties of the auditor of the Philippine Islands in connection with this claim were ministerial or discretionary. If ministerial, the court had jurisdiction and should have issued the writ of mandamus, not because the court decided the claim was a just claim, but because the insular collector of customs had decided it was a just claim. * * *

It is a special class of claims which is treated by special arrangement in the Philippines and with regard to legislation which is in effect.

In this class of claims the brief filed by the attorney for the insular auditor himself says the major question and issue in the case was whether the duty of the insular auditor in the refund of this money was ministerial or discretionary. If ministerial, then a mandamus would lie against the auditor; if discretionary, of course, the courts would not assume to control by mandamus discretionary authority reposed in an administrative official.

Senator BRATTON. Does the general rule prevail that if the duty being performed by the officers is purely ministerial and does not involve any discretion on the part of the officer that mandamus will lie to compel such officer to perform a purely ministerial duty? On the other hand, if the officer possesses any discretionary power concerning the action, the courts will not review that and will not undertake to control the exercise of a discretionary power?

Mr. REYES. Yes.

Senator BRATTON. That is the point that is interesting to me in the Ynchausti case. If the action of the officer there was purely ministerial and involved no discretion whatever, I think the court would be clearly right in granting the writ of mandamus to compel the performance of the ministerial duty; if it involved an act which was discretionary in the slightest degree, the court should not undertake to control that officer in the exercise of that discretion.

Mr. REYES. The point I wish to make—

Senator BRATTON. Which was it—was the act ministerial or was it discretionary?

Mr. REYES. Here are the facts in the case: The court found by a 6 to 2 decision that it was ministerial.

Senator BRATTON. Purely ministerial?

Mr. REYES. The insular auditor contends it was discretionary and the case is before the Supreme Court of the United States.

Senator BRATTON. Upon that question?

Mr. REYES. Upon that question. It seems to me, then, the case being still unadjudicated by the Supreme Court of the United States—and I suppose the members of the committee would have full confidence in the learning of the members of the Supreme Court of the United States—that there is not sufficient justification for decision at this time by this committee on this debatable question with respect to this particular case.

Senator BRATTON. Is that the point on which the court decided, six holding it was purely ministerial and two of them holding it was discretionary?

Mr. REYES. The six held it was ministerial and the two held that the powers of the auditor of the Philippine Islands would not be controlled by the courts.

Senator BRATTON. Upon the theory that this involved discretionary power?

Mr. REYES. I suppose upon the assumption that it involved discretionary power.

Senator BAYARD. May I interrupt there a moment?

Mr. REYES. Yes, sir.

Senator BAYARD. As a matter of fact, in this particular case, roughly speaking, the matter came before the auditor to approve the taking of certain moneys out of the Treasury?

Mr. REYES. I do not know whether you would be exact about it in that language, Senator. It is provided by law in the Philippines that no money can be drawn out of the treasury without countersignature by the auditor himself.

Senator BAYARD. Yes; and an attempt was made by some other official to draw money out of the treasury that had to come under the auditor's supervision, was it not?

Mr. REYES. Yes.

Senator BAYARD. And when he attempted to draw that money out of the treasury the auditor said, "No; the money can not be drawn out"; is not that a fact?

Mr. REYES. Yes.

Senator BAYARD. In this particular case?

Mr. REYES. Yes.

Senator BAYARD. In other words, he used his authority as auditor to exercise discretion as to whether that money should go out in accordance with that warrant that had been drawn; is not that the fact?

Mr. REYES. Yes.

Senator BAYARD. So that when the case came up, as Senator Bratton suggested, touching on the discretionary power and not the ministerial power of the auditor, because everything that comes to the auditor under the terms of his office must be passed upon. He can not neglect his duty; he must say yes or no. But in this case if he said no it must be presumed he exercised discretionary power. The courts did not hold he had discretionary power?

Mr. REYES. No. It simply held in this particular case the power granted to him was not of a discretionary kind.

Senator BRATTON. In other words, suppose the officers should say when the voucher drawn to cover the monthly pay of the governor was presented—and the law is plain in fixing the amount of salary and how it is to be paid—suppose at the end of the month the auditor should say, "I do not think that voucher should be paid." The mere fact that he calls it discretionary does not make it so.

The act might be purely ministerial and be his plain duty to approve and countersign the voucher and, I take it—while I am not familiar with the Ynchausti case—in this case the court decided that regardless of what the auditor called it, the act was ministerial?

Mr. REYES. In this particular case.

Senator BRATTON. That is what I am talking about—and was not discretionary?

Mr. REYES. Yes.

Senator BRATTON. And consequently that mandamus was the proper method to tell him to perform a purely ministerial duty. Two held that the act was discretionary, involving the exercise of discretion, and that the court would not control the officer in that; and that is the question now for the Supreme Court to decide?

Mr. REYES. For the Supreme Court of the United States—

Senator BRATTON. For the Supreme Court of the United States to decide?

Mr. REYES. Yes. And that is the question which in my opinion this bill would attempt to decide at this particular time in favor of the contention of the auditor, notwithstanding the fact that it is admitted the duties of an administrative official are of two kinds—ministerial and discretionary; and notwithstanding the fact that six of the eight members of the Supreme Court of the Philippine Islands, who passed on the case, said that this duty in this case was ministerial. That is the point in issue at this time.

Senator BAYARD. Do you mean to contend, Mr. Reyes, that the auditor has no discretion?

Mr. REYES. No. In other cases he has discretionary authority; but I maintain that not all of his duties are discretionary, and that is the point in dispute.

If you will peruse the statement I made at the beginning regarding the Ynchuasti case, the recital of the facts and the law in the case, there will be some illumination on that point, whether discretion in this case was decided in favor of the collector of customs or in favor of the insular auditor.

I suppose it would not be maintained by anybody that the auditor has the right to approve or disapprove in his discretion any act of any other official involving the expenditure of public money. Certainly that would create confusion in the administrative system of any government.

This majority decision was penned by Mr. Justice Johns, an American, and was signed by four other justices, one American and three Filipinos. In addition, Mr. Justice Street, an American, filed a separate concurring opinion and said, in part, as follows:

* * * It seem to me, however—and upon this decisive point I concur with the majority—that the power to enforce the settlement of accounts does not include the power to divert funds from the city treasury in the manner now threatened. The insular auditor certainly does not have the power to put his hands into the city treasury and take out money to pay its debts, however meritorious the obligation; and if he does not have this power, he can not intercept and divert in course or transmission to the city. (Pages 87, 88, transcript of record.)

One member of the court filed a dissenting opinion. Two justices did not take part in the consideration of the case. The court thus decided six to one against the contention of the insular auditor.

Under ordinary circumstances the findings of law of the highest tribunal of justice in any country are considered to be the most authoritative exposition of what the law is. The weight of such judicial conclusions is increased when such a majority as was true

of these two cases is found to be in favor of a certain interpretation of the law. And yet the underlying reason for the presentation of this bill, inspired by the insular auditor himself, is the assumption that the auditor has been deprived of powers which unquestionably belong to him and that the Philippine Supreme Court undoubtedly was in error. The judgment of a single layman not learned in the law has more authority than that of six men who have devoted their lives to its study.

Nor is this the only case when apparently the insular auditor is to be taken, in fact, as the final authority on the measure of his own powers.

At this point I wish to make a few passing remarks as regards the character of some of the legal contentions advanced by the insular auditor himself. Among other instances may be mentioned the veto by the Governor General on objections from the auditor's office of an amendment passed by the Philippine Legislature to the act, section 3083, "Defining the conditions under which the government of the Philippine Islands may be sued." Provision for permitting suits against the Government on moneyed claims involving liability arising from contract had been recommended by the American Chamber of Commerce in Manila. The original draft of this act was made by Mr. F. C. Fisher, a former member of the Philippine supreme court. It had been passed by the Philippine Legislature but in the course of passage changes crept in which defeated its purpose. The bill became a law after signature by the Governor General. When the defect was noted later, the Governor General again requested Mr. Fisher to prepare an amendment. This was complied with. The measure was recommended by the governor. It was approved by the legislature without any change. No objection regarding its constitutionality came from the office of the attorney general. But the auditor's office held that it was unconstitutional and the Governor General vetoed a bill which he himself had recommended previously.

I pass now to the other point: It is contended that these two decisions of the Philippine supreme court are at variance with decisions made by the Federal courts in the United States. To this a sufficient reply is that the cases now pending before the Supreme Court of the United States and from that quarter alone may we expect a final and authoritative decision on what the law is in the United States.

Then I pass to another point: It has been said that the decisions, especially in the Ynchausti case, in 1925, are in conflict with a previous decision of the Philippine supreme court in an analogous case, that of *Lamb v. Phipps*, 1912 (22 Phil. Reports, 456). In other words, the argument is that the decision in the earlier case was good law and that the precedent which it established has been broken in the Ynchausti case. The *Lamb-Phipps* case, it is alleged, was the correct interpretation and the Ynchausti case the wrong one with respect to the powers of the auditor. Inferentially it is assumed that the two cases are completely analogous, and it was stated before this committee that the supreme court of the Philippine Islands in making this decision in the Ynchausti case did not even try to make a distinction between this and the former one. However, on this matter, the supreme court of the Philippines said; and this is from the transcript of the record in the Ynchausti case [reading]:

The defendant cites and relies on the case of *Lamb v. Phipps*. * * * But that case was one in which the auditor was clearly authorized and empowered to exercise discretionary and quasi judicial power. It involved an examination and settlement of an account, the balancing of items of debit and credit to ascertain if a balance was or was not due from Lamb to the Government, and no other Government official was empowered to settle and decide those questions.

There is a marked difference between that and the instant case on both the law and the facts. * * *

That is what the Supreme Court decision said about the distinction between the Lamb and Phipps case and the Ynchausti case.

Then it is further said that in issuing a writ of mandamus against the auditor the Philippine Supreme Court took a step unprecedented either in the Philippines or the United States. But the records show that the Philippine Supreme Court in 1918 granted by a unanimous decision a writ of mandamus against the auditor and purchasing agent of the Philippine Islands in the case of *Compania General de Tabacos v. French and Unson* (39 Phil. Repts. 34). The insular auditor accepted the decision of the court, no cry of judicial interference with his jurisdiction was raised, and the Philippine government continued to function normally; and here is the point which I have already mentioned, Mr. Chairman, that is, with regard to the practice in the United States. The counsel for the insular auditor in their brief supporting the petition filed in the Supreme Court of the United States for a writ of certiorari said [reading] :

The major question in the case is whether the duties of the auditor of the Philippine Islands in connection with this claim were ministerial or discretionary. If ministerial, the court had jurisdiction and should have issued the writ of mandamus, not because the court decided the claim was a just claim but because the insular collector of customs had decided it was a just claim. * * * (P. 9.)

The court in the Ynchausti case having held the duty of the auditor to be ministerial, it is difficult to understand the allegation that the issuance of the writ of mandamus has no basis in accepted practice. And that the payment of claims which have been adjudicated and for which an appropriation is available is merely a ministerial duty is admitted by Mr. McGuire, one of the attorneys for the insular auditor, when he stated in an article for the *Illinois Law Review* that settlements made by accounting officers on judgments by the Court of Claims or the district courts when appropriations are available are merely ministerial.

It is generally conceded even by the counsel for the insular auditor in this case that the writ of mandamus would lie against any officer if the duty to be performed is ministerial.

The CHAIRMAN. Just review that a little further along the line of the question asked by Senator Burton. You agree, then, that if we had a case in which there is no doubt about it being discretionary authority that in that sort of a case their mandamus would lie?

Mr. REYES. I agree, with this modification, Senator, that proper body which finally passes upon whether his duty is discretionary or ministerial it is not the officer himself who is affected, but the courts as a last resort. In case there is a dispute as to the interpretation of the law between one administrative official and another, certainly it would not be contended that one of the parties to the case should himself be the judge.

Senator BINGHAM. If I understand the bill, Mr. Chairman, the Auditor is not the judge of last resort?

The CHAIRMAN. Appeal is provided for.

Senator BINGHAM. To the Governor General and from the Governor General to the Comptroller General.

Mr. REYES. In connection with that point of view, Senator, I might say that as far as I understand this matter, the final interpretation of the laws can not ultimately be lodged in any administrative official; there would have to be some provision for some kind of determination or adjudication by the courts, whose peculiar function it is to interpret the laws regarding the powers of public officials under the law.

Senator BINGHAM. The appeal should lie from the Governor General to the Court of Claims in this country; would not that meet your objections?

Mr. REYES. I should prefer not to answer that question categorically, because in my opinion this bill is such a complicated one that any answer to a particular portion may be misconstrued with regard to the advisability of the passage of the bill itself. If this were a simple matter on that question of yours, Senator, and if there were no other provisions of the bill, then it would be easy to answer that.

Senator BRATTON. Just to get your general view, there is nothing so new and so novel about the Ynchausti case—the decision there—as to call for urgent legislation of this kind.

Mr. REYES. Not at all.

Senator BRATTON. You contend that the law declared there is in harmony with the general weight of authority in the United States; that is, that, assuming that the court was correct in determining that the act involved ministerial duty, it necessarily follows that the court was also correct in saying that mandamus was the correct remedy?

Mr. REYES. If the premise is correct, then the conclusion must be correct.

Senator BRATTON. And, as I gather it, your contention is that the Ynchausti case is sound?

Mr. REYES. Well, Senator, I am not taking sides in this matter; I am not giving any judgment, because I do not assume that my judgment would be better than the judgment of the Supreme Court of the Philippines or the judgment of the Supreme Court of the United States, which will undoubtedly decide this case. What I am trying to point out is that in this particular case there are two sides to the question, and for the Congress of the United States at this time to pass this legislation is to assume that the Insular Auditor is correct and that the Supreme Court is wrong.

The CHAIRMAN. I was wondering what becomes of the general theory of our accounting system, if it shall be determined that the court may in any case decide whether a given act is ministerial or discretionary. Does not that, in effect, then provide that this Government can be sued without having to establish anything in the Court of Claims? Does not that overthrow the whole idea of our accounting system?

We have made the Comptroller General pretty nearly a supreme court in himself; he is a judicial officer. If you are going to hold that a plaintiff may come in and raise this question and the court on any matters decides that it is a ministerial duty, it would seem that there is some danger that the foundation of your accounting system is absolutely gone; in other words, that anybody can bring in a claim against the Government and if it is decided that it is a ministerial act that then you can take money out of the Treasury without authority of law. That is the danger of the situation.

Mr. REYES. Senator, I wish to make these observations regarding one point: We realize as much as the others do that the Public Treasury should be protected. But in passing legislation of this character we must bear the following facts in mind: First, this is a decision limited to a particular class of claims. It does not at all affect the other classes of claims against the Government; second, that the practice in the United States itself with regard to refund of customs duties which the collector of customs thinks have been erroneously imposed is the same as the practice in the Philippine Islands. Under the customs regulations of 1923 the collector of customs reviews the decisions protested by the consignee and if he thinks that the duty imposed has been excessive he shall refund the money without the need of anybody having the authority to check his refunds. That is in the United States customs cases.

In this particular case we think that the practice under existing laws in the Philippines is more nearly in harmony with the practice in the United States than the system that would be imposed under this bill.

And then the other point that I wish to make is that we come to protecting the Public Treasury by the proper interpretation of the duties of public officials under the law, I think there can be no question that the courts are better guardians than a single administrative official.

The CHAIRMAN. That brings out the whole thing. Then, really in your thinking you believe it safer to leave the matter to the courts than to depend upon an accounting system?

Mr. REYES. No; I do not.

The CHAIRMAN. I understood you to say that you thought the court would be safer than an individual at the head of an accounting system.

Mr. REYES. No.

The CHAIRMAN. Of course, we proceed on the other theory that there would be an accounting officer with very large powers, practically exercising judicial functions, and that the courts would have no right to mandamus him. You take the other view, as I gather?

Mr. REYES. No. I shall explain my point, Senator: The argument that if the courts are allowed to pass upon questions of this character there will be danger to the Treasury is predicated upon the thought that the supreme court would abuse its authority and interpret the law wrongly. If that is the basis of that argument, then why can not we reverse the principle and say, Is not the insular auditor himself liable to abuse his discretion, especially on matters regarding his own jurisdiction and the extent of his own authority? It seems to me if you are to choose between those two there would

be no question about the choice. I shall come to the substantial provisions of the bill. I shall lay aside these legal questions.

Putting these legal questions aside, it is contended that the accounting establishment and the system of deciding claims which is found in its provisions is desirable. I shall now discuss this first point. The contention is that while the bill does not increase the powers of the auditor, it clarifies them.

A comparison of the provisions of the proposed law with those of the Jones law will show that there is provided a vast increase in the powers of that official of the Government because of the following facts:

First, with regard to the revenues and receipts of the Government, the Jones law gives him power to "examine, audit, and settle all accounts. * * *" The proposed law adds the words "adjust" and "decide." Here the contention of those in favor of the bill has been that the power to settle includes the power to decide, and that therefore there is no increase of power. But it is hard to understand why, if that is the settled and undoubted interpretation, it was found necessary to insert the word at all.

Second, in the Jones law no mention is made of the jurisdiction of the auditor over claims. Under the pending bill not only is his jurisdiction made to include specifically the subject of claims, but it is also true that in this matter the additional words "adjust" and "decide" are made equally applicable. But it is certain that "claims" differ greatly in meaning from "accounts." Settling an account is essentially an auditing process. Deciding a "claim" is a judicial process; and if the accounting officer of the Government is to be given authority in the matter at all, it ought to be one that is final and conclusive upon any one of the other two departments of the GovernmentJ—the judicial and legislative.

Third, the bill further increases the powers of the auditor in this respect: In the Jones law the auditor is given power merely to "audit in accordance with law and administrative regulations" all expenditures of funds or property belonging to the Government. In the proposed law he will not only "audit" but also "examine, adjust, decide, and settle" all expenditures of funds or property.

Then, fourth and most important of all, in the Jones law the decisions of the auditor are final and conclusive upon the executive branches of the Government only. In the pending bill the words "upon the executive branches of the Government" are omitted. The explanation that has been offered by the attorneys for the insular auditor is that this has been done to cure what they believe to be interference by the courts with the discretionary authority of the auditor. In other words, in order to protect the powers of that official his decisions are to be made binding upon the judicial and legislative departments and his authority is to be made unquestioned and unquestionable by the two other coordinate and supposedly independent branches of the Government.

In the United States the decisions of the former Comptroller of the Treasury and of the present Comptroller General, whenever they are made final and conclusive by law, are made applicable only to the executive branches of the Government.

In the Philippines, from the date when the accounting office under American rule was first established in 1899 down through the passage

of the accounting act by the Philippine Commission in 1907, the enactment of the Jones law in 1916, and up to the present time the decisions of the auditor are binding upon the executive branches of the Government only.

In spite of this radical extension of the authority of the insular auditor, the statement has repeatedly been made that the bill does nothing more than clarify existing powers of the auditor and does not seek to extend them. The most that can be said in favor of this theory of simple clarification is that this proposed measure clarifies the powers of that official by granting to him every claim of power he has made and transferring to his jurisdiction every inch of what is, after all, disputed and debatable territory.

Does this bill really clarify existing laws relating to the auditor's office? My contention is that it does not; it complicates existing law.

It modifies, if it does not actually repeal, the many provisions of law in the Philippines relating to the refund of customs duties, internal revenue taxes, and all other monetary claims for or against the Philippine Government. This is done without outlining a system of procedure by which the present authority of the collector of customs and of internal revenue over matters pertaining to the collection of taxes is to be adjusted to this new, all-inclusive jurisdiction of the auditor's office.

Moreover, it states that, except as otherwise specifically provided in the act, the insular auditor shall have the same powers which are now or which may hereafter be conferred upon the Comptroller General of the United States. There will thus be effected a wholesale transplantation of the laws and the precedents governing the office of this official of the American Government. There will also be an automatic extension to this portion of American territory 10,000 miles away of every new law, decision, or precedent affecting the accounting establishment of the United States. And this process will, it is believed, serve to clarify existing laws in the Philippines relating to the office of the auditor.

In the amendment which has been incorporated in the House draft of this measure, the court of first instance of the city of Manila is given the same jurisdiction as is now or as may hereafter be granted to the Court of Claims and the Court of Customs Appeals of the United States. But no attempt is made to harmonize this jurisdiction of the court with the "final and conclusive" decisions of the auditor and no solution is provided to the difficulty which must arise in case that official refuses to settle the judgments of the courts when appropriations are available for their payment.

In other words, we will be in the same situation as we are now, with the addition that laws will be more complicated.

I come now to another point: It is claimed, furthermore, that the passage of the bill is necessary to safeguard the Philippine treasury. This is your point that you suggested, I believe, Mr. Chairman. The inference is that under the present system of handling claims against the Government, the treasury is not as well safeguarded as it ought to be and that, under the provisions of this proposed law, better safeguards would be provided. In order to be on concrete ground, it would be desirable to confine the discussion of this point to the problem involved in the Ynchausti case, namely, the refund

of customs duties erroneously or illegally collected. This, of course, ought not to be understood as meaning that if defects are discerned in this instance a complete overhauling of our system of handling claims against the Government such as is contemplated in this bill would be necessary. For the refund of customs duties in the Ynchausti case represents a particular class of claims governed by provisions of law relating to that specific subject only.

Our inquiry is this: What are the checks to possible abuse of authority on the part of the collector of customs in the matter of refunds of customs duties? These are the following:

First, there is the fact that, with the exception of Manila, the decisions of the deputy collectors in the other ports in the Philippines must be approved by the insular collector of customs.

Second, the secretary of finance, to whom a copy of the decision of the collector is required by law to be forwarded, may remove the case to the court of first instance of the city of Manila.

Third, the insular auditor must countersign the warrant for payment, while he has no authority to override the decision of the collector so long as the latter acted within the law, nevertheless, he may ascertain whether the legal requirements have been complied with or call the attention of the secretary of finance in case, in his opinion, serious errors have been made.

Fourth, the collector of customs may be removed by the appointing authority.

Fifth, appropriation to pay the refunds must be available and the collector has no power to determine whether such funds are available, and the collector has no power to determine whether the said funds are available; it is the insular auditor who determines in that case.

Such are the checks which are pronounced to be woefully inadequate to safeguard the Philippine treasury. In their place is to be instituted a plan which, supposedly, will furnish better safeguards. Under the proposed law, the following system will be enforced:

First, the auditor for the Philippines will decide all claims for or against the Philippine Government including the refund of taxes alleged to have been illegally or erroneously collected.

Second, the decision of the auditor as to whether taxes were erroneously or illegally collected will override the decisions of the tax-collecting agencies of the Government.

Third, while, in the amendment to the House bill, it is provided that the court of first instance of the city of Manila shall have the same jurisdiction over claims as the Court of Claims and the Court of Customs Appeals in the United States, the choice as the method of settlement is left to the claimant. Taken in connection with the difficulty in the payment of the judgment of the court, there should not be much doubt about the method which most of the claimants would choose.

Fourth, the insular auditor, the person who will decide the claim and who will thus have the power to create obligations on the part of the Government, will also countersign the warrants for the payment of those obligations.

Fifth, Act 357, as amended by Act 1515, being still in existence and it being impossible to repeal it without the consent of the Gov-

ernor General, who is the administrative superior of the auditor, a permanent and indefinite annual appropriation for the refund of all moneys erroneously received or covered in the treasury will continue to be available for the payment of claims allowed by the auditor's office. The insular auditor, who will have the power to create obligations on the part of the Government and who will countersign warrants for their payment is the authority who decides whether funds are available for the payment of those claims.

As the brief filed before the supreme court of the insular auditor said [reading]:

The determination of the availability of a general appropriation for the payment of any claim payable from a general appropriation is a quasi-judicial or discretionary matter within the exclusive jurisdiction of the auditor, subject only to the administrative appeals provided by law (p. 10).—

It is to be presumed that persons whose claims are allowed will not appeal from such decisions in their favor.

Sixth, if the decision of the person who creates the obligation, approves its payment, and decides on the availability of funds for such payment should be favorable to the claimant, then such decision is final upon the executive, legislative, and judicial branches of the Government and, according to the House bill, can "never thereafter be reopened or considered."

It seems clear that if the safeguards in the existing laws are inadequate to protect the Philippine treasury, the remedy proposed is worse than the original disease.

Third, as a final argument, it is affirmed that the aim of the measure is nothing more than to place the auditor of the Philippines in the same position with respect to the Philippine government that the Comptroller General of the United States holds with respect to the American Government and to give the former powers no greater than those enjoyed by the latter.

A glance at the laws and practices in the United States fails to bear out this conclusion. In the matter of procedure in the refund of customs duties, it will be found that the existing laws in the Philippines are much nearer to the present practice in the United States than the system provided for in the pending bill would be. Upon receipt of a written protest from the consignee, the collector is obliged to review his decision and may modify it in whole or in part and refund any duties which he finds to have been collected in excess. (Sec. 515, Ch. 356, Stat. at L. 1922: Art. 778-779, Customs Regulations, 1923.) Although refunds in compliance with decisions of the Board of General Appraisers of the Court of Customs Appeals must be done by the Secretary of the Treasury (Art. 787, Customs Regulations, 1923), it is open to the collector to review his own decisions and if he concludes that money should be refunded as a result of such review, the refund is made by him without check by any other official. And, in the matter of the finality of the decisions of the Comptroller General of the United States, it has not been denied that it extends only to the executive department, whereas in this bill the conclusiveness of the decisions of the auditor is not limited to the executive branches of the government. That the latter would have greater powers than the former is shown by the language of the bill itself. It provides that the auditor shall have the same

powers which are now or which may hereafter be conferred upon the Comptroller General, "except as otherwise specifically provided in this act." Moreover, if the intention really is to place the auditor on the same level as the comptroller, that purpose could have been served by the presentation of a bill with brief and simple provisions.

When the larger aspects of the problem of a proper system for the supervision of the expenditures and disbursements of Government are considered, the contrast between the position of the Comptroller General in the United States and that of the insular auditor in the Philippines is even more glaring. The dissimilarities may be enumerated as follows:

First, in the United States, the accounting establishment is independent of the executive and, in some respects, may be said to be responsible to the legislative power. In the Philippines the auditor is and, under this bill, will continue to be under the supervision of the Governor General. On this point of executive control, the report of the select committee on the national Budget system of the House of Representatives (Rept. No. 14, p. 7, 67th Cong., 1st. sess.) said:

Under the present plan the Congress has no power or control over appropriations after they have once been made. It has no knowledge as to how expenditures are made under these appropriations, and in as much as the Comptroller of the Treasury and the six auditors owe their appointment to the President, they could not hope to hold their positions if they criticized wastefulness or extravagance or inefficiency in any of the departments. The Executive having the power to initiate the Budget, certainly an independent audit is necessary to insure at all times a businesslike execution of the Budget.

Second, the Comptroller General is responsible more to the legislative than to the executive power. The Philippine Legislature has no control, direct or indirect, over the insular auditor. The comptroller is appointed by the President by and with the advice and consent of the Senate for a term of 15 years. The auditor is appointed by the President without the intervention of the Philippine Legislature. The comptroller is independent of the executive departments. The auditor is under the supervision of the Governor General.

Third, under the system in the United States if it be true, as it is, that the judiciary can not interfere with the discretionary powers of the comptroller, it is equally true that in general, his decisions are not binding upon the courts. The same rule that prevents the courts from interfering with the powers lawfully vested in the comptroller operates to prevent the latter from interfering with the function of the courts to interpret the law. But, under the proposed bill, the decisions of the auditor are made final and binding without any qualification.

Fourth, in the United States, the Congress through its power to make appropriations and because of the constitutional provision that no money shall be paid except in pursuance of an appropriation may exercise, if it so desires, the authority to review, in effect, and for itself the claims allowed against the government. Under the proposed law, the Philippine Legislature would not have complete freedom of action because, first, the decisions of the auditor are to be final and binding, and, second, there is a law authorizing a permanent and indefinite annual appropriation for the payment of refunds of moneys erroneously covered into the treasury. This

law can not be repealed without the approval of the Governor General, who is the administrative superior of the insular auditor.

Fifth, the principal underlying the organization of the accounting establishment in the United States is that the person who originates expenditures should not have the power finally to pass upon their payment. Under the proposed bill, the insular auditor would decide claims against the government, would authorize the disbursement of funds in payment of claims allowed, and would determine whether or not appropriations are available for the payment of such claims.

I will conclude by saying that with respect to that part of the argument it is our contention that under the proposed system there will be less safeguards for the Philippine treasury than under the present system.

The system that is provided in the bill is entirely different; in fact, it is the opposite of the system that is in force in the United States; and, finally, I wish to conclude by saying that if these arguments tend to cast doubt on the intrinsic merits of the bill, it is no less true that there are other reasons equally powerful and even more fundamental which make its approval inadvisable.

It would diminish very greatly the autonomy granted to the Filipinos. The powers granted to a legislature do not mean very much unless they assure the effectiveness of legislative authority over the actual conduct of government; that is to say, unless it includes authority to create administrative departments, determine their organization and powers, provide for the manner of appointment of the heads of those departments, and the power to control the purse.

If Congress transfers discretionary authority from various administrative officials to the insular auditor and gives to the complete discretion of the latter all claims for or against the Government, as well as sets his decisions beyond the reach of the judiciary and the legislature, it will have diminished the control of the Philippine Legislature over those matters intrusted to the jurisdiction of locally appointed officials as well as its control over the strings of the public treasury, and thereby will have struck a serious blow at the autonomy already granted to the Filipino people. The issue, in this instance, is whether the Congress will take away with one hand what it has freely granted with the other.

Moreover, the organization and the jurisdiction of the accounting establishment should be the subject of statutory and not of constitutional legislation. If this bill is approved, it would be in direct violation of the sound principle that the constitution of any country should include only those subjects which are of a fundamental character. Once a step in this direction has been taken, the way would have been smoothed over for congressional action on Philippine matters which are of purely local concern and which should be dealt with by the local legislature. And if this practice should be fully developed, there would have been established an impossible system of government, namely, the long-distance kind.

Lastly, is must not be overlooked that the Philippine problem is at present surrounded by difficult and trying circumstances. The existing situation calls for processes of common counsel and policies of moderation and conciliation on both sides. The procedure fol-

lowed and the policy implied in the pending bill, far from dispelling the difficulties which now exist, will aggravate them.

The CHAIRMAN. I add for the record at this point a memorandum that was prepared for the Secretary of War by Major Hedrick on this same subject.

(The memorandum is here printed in full as follows:)

Memorandum for the Secretary of War, by Major Lawrence H. Hedrick.

APRIL 10, 1926.

H. R. 10940. Sixty-ninth Congress, first session. "To amend and clarify existing laws relating to the powers and duties of the auditor for Porto Rico and the auditor for the Philippine Islands," merely extends to the auditors the powers which they were supposed to have under existing laws and which the accounting officers of the United States, now Comptroller General, have had since the ordinance of September 26, 1778, of the Continental Congress.

The accounting system for the government of the Philippine Islands is substantially the system that has been in operation in the United States since the said ordinance of September 26, 1778. The Constitution provides, in Article I, section 9, that no money shall be drawn from the Treasury save in consequence of an appropriation by law, and the organic act contains a similar provision with respect to the treasury of the Philippine Islands. At no period in the history of the United States could money be secured from the United States Treasury except after an appropriation by Congress and on warrants drawn by some one of the heads of the various executive departments—now the Secretary of the Treasury—and countersigned by the Comptroller of the Treasury, now the Comptroller General of the United States. Also, at no time in our history have public moneys been advanced to officers of the Government for expenditure in their discretion and without being required to account therefor, except in a few instances in time of war.

In the early days when there was some dispute between the executive departments and the comptrollers of the United States Treasury as to whether their settlements were final and conclusive on the executive departments, but this dispute was settled in favor of the contentions of the comptrollers by the act of March 30, 1868 (15 Stat. 54), which provided that such settlements should "be taken and considered as final and conclusive upon the executive branch of the Government." There was a recommendation before Congress in 1869 for repeal of this provision, but the House Committee on Revision of the Laws reported unfavorably thereon. The committee said that:

"* * * power in the head of the War or any other Department to set aside and change the findings of the accounting officers of the Government is at war with the whole principle upon which the system is based; that the allowance and settlement of the disbursement of all public funds should be vested wholly in a set of officers other and different from those who made the expenditure. If their allowances and settlements can be set aside and changed by the head of the department under whose direction the money was paid, or the claim accrued, then the whole system of checks to improper expenditures, which is was supposed had been established, falls to the ground." (26 Cong. Rec. 4342.)

No change has ever been made in this provision and same was carried into the organic act as to the effect of the settlements of the auditor for the Philippine Islands, and it was said by the Court of Claims in *Geddes v. United States* (38 Ct. Cls. 428, at p. 444):

"The accounting officers are the guardians of the appropriations. It is their business to see that no money is paid out of the Treasury unless the payment is authorized by an appropriation act. It is not their business to adjudicate abstract questions of legal right beyond the legal right of a person to be paid out of a specific appropriation. An appropriation constitutes the means for discharging the legal debts of the Government.

"The judgment of a court has nothing to do with the means—with the remedy for satisfying a judgment. It is the business of courts to render judgments, leaving to Congress and the executive officers the duty of satisfying them * * *."

There was no right to sue the United States prior to 1855, and even after such right to sue had been given Congress did not authorize the payment of judgments from general appropriations in the Treasury but required such

judgments to be reported to it for specific appropriations with which to pay same. (See act September 30, 1890, 26 Stat. 537.) In other words, Congress remained in control over appropriated public money, through the Comptrollers of the Treasury, and the judgments of the courts had nothing to do with such appropriated moneys.

Prior to 1855, when the United States consented to be sued, there were several attempts to secure public money from the United States Treasury by means of extraordinary judicial process against public officers, but such attempts were uniformly abortive. (See *Brashear v. Mason*, 6 How. 92; *Decatur v. Paulding*, 14 Peters, 497; *Reeside v. Walker*, 17 How. 273; *United States v. Guthrie*, 17 How. 284.) The Supreme Court of the United States said in the latter case, in denying a writ of mandamus against the Secretary of the Treasury, that—

"The only legitimate inquiry for our determination upon the case before us is this, whether, under the organization of the Federal Government, or by any known principle of law, there can be asserted a power in the Circuit Court of the United States for the District of Columbia, or in this court, to command the withdrawal of a sum or sums of money from the Treasury of the United States, to be applied in satisfaction of disputed or controverted claims against the United States? This is the question, the very question presented for our determination; and its simple statement would seem to carry with it the most startling considerations—nay, its unavoidable negation, unless this should be prevented by some positive and controlling command; for it would occur, a priori, to every mind that a treasury, not fenced round or shielded by fixed and established modes and rules of administration, but which could be subjected to any number or description of demands, asserted and sustained through the undefined and undefinable discretion of the courts, would constitute a feeble and inadequate provision for the great and inevitable necessities of the Nation. The government under such a régime, or, rather, under such an absence of all rule, would, if practicable at all, be administered not by the great departments ordained by the Constitution and laws, and guided by the modes therein prescribed, but by the uncertain and perhaps contradictory action of the courts, in the enforcement of their views of private interests."

Even after the United States had consented to be sued, the Supreme Court of the United States denied a writ of mandamus against the Comptrollers of the Treasury. (*United States v. Lynch*, 137 U. S. 280.) And while such writs had been allowed in a few instances against other officers of the Government to require payment of some specific appropriation made by Congress (*Houston v. Ormes*, 252 U. S. 469, and *Smith v. Jackson*, 241 Fed. 747, 246 U. S. 388), it was believed when the organic act was enacted that the incorporation in said act of the language contained in laws relating to the auditors and Comptrollers of the Treasury with respect to the finality of their settlements would give the auditor for the Philippine Islands the same immunity from control by extraordinary judicial process.

However, experience has demonstrated that said language is not sufficient to give the auditor immunity from control by extraordinary judicial process and to continue the practice existing in the United States with respect to the auditors and comptrollers of the Federal Treasury, for the Supreme Court of the Philippine Islands has recently granted two or three writs of mandamus against the auditor requiring him to countersign warrants drawing money from general appropriations and to pay certain claims. Such control does not now exist in the United States over the acts of the Comptroller General in countersigning warrants chargeable to general appropriations and in paying claims. (See *United States v. Lynch*, supra, and *Carroll Electric Company v. McCarl*, 8 Fed. (2d) 910; *Skinner & Eddy Corporation v. McCarl*, 8 id., 1011.) An exception to the Comptroller General has apparently been made in the last few months as to the pay of Army and Navy officers (*McCarl et al. v. Cox*, 8 Fed. (2d) 669). However, this exception does not apply to the auditor for the Philippine Islands, for he does not pay such officers.

The language in H. R. 10940 that the settlements of the auditor (page 6, line 8) of the Philippine Islands drops the words "upon the executive branches of the Government," and provides that they shall be "final and conclusive," except when an appeal is taken as elsewhere provided in the bill. It will be seen, therefore, that the purpose of the change is to continue the practice which has obtained in the United States since the ordinance of 1778, with respect to the comptrollers and auditors of the Treasury, now the Comptroller General

of the United States, and which it was believed obtained with respect to the auditor for the Philippine Islands under the same language of the corresponding statutes. The bill makes no change in theory as to the independence of the auditor from judicial control, but clarifies the existing statutes so as to overcome the recent decisions of the Supreme Court of the Philippine Islands, asserting a jurisdiction to control the auditor by extraordinary writs, a jurisdiction which has never theretofore existed either as to the accounting officers of the United States Treasury or as to the auditor for the Philippine Islands, and a continuation of which—as pointed out by the Supreme Court of the United States in the Guthrie case, *supra*—will subject the treasury of the Philippine Islands to “the undefined and undefinable discretion of the courts” and place it under “an absence of all rule.”

The CHAIRMAN. That closes the hearings and the committee will now go into executive session.

(Whereupon, at 11.50 o'clock a. m., the committee proceeded to the consideration of executive business, and at the conclusion thereof, adjourned to meet at the call of the chairman.)